

All along, before a certification can be made and even now, before Federal observers are assigned, the Justice Department makes a determination that racial and language minority group members are facing circumstances in the polling place that would violate the Voting Rights Act. We get that information by conducting investigations, conducting interviews in the normal way one would investigate a possible violation of a Federal law.

When you reach that conclusion, you don't have to have proof by a preponderance of the evidence in a structured way that the violations have occurred. What you need is information that indicates that those violations are occurring, and that's basically what happens.

Mr. WATT. So it would be some kind of good faith determination by the Justice Department that a violation of the 14th or 15th amendment has or is about to occur?

Mr. WEINBERG. Right.

Mr. CHABOT. The gentleman's—

Mr. WATT. May I ask unanimous consent for one additional minute—

Mr. CHABOT. Without objection, so ordered.

Mr. WATT. —just to ask one additional question of Mr. Weinberg.

The reports of the observers—you testified you don't think they ought to be made public, published, unlike when we're observing elections in other countries.

What's done with those reports now?

Mr. WEINBERG. Those reports are used by the Justice Department attorneys to determine whether more legal action is needed, if there's already a lawsuit pending or if there's no lawsuit, whether a legal action is needed. And I should say also that these reports are not always kept from public view. They're—the redacted versions have been released under the Freedom of Information Act. I mean there are ways to see them. Often, they're not all that illuminating since they're—

Mr. WATT. But wouldn't it serve some deterrent effect for—to future voting rights violations to publish the reports of the observers?

Mr. WEINBERG. Yes. I think the deterrent effect is in the legal action by the Justice Department, and I think that's been shown to be very effective.

And since these reports often are also used if a court has certified a county, the report goes to the court. And the reports are used in those instances to determine liability of the defendant or the county and whether the relief has been adequate. So they are in that sense used right away, and I think the deterrent effect is really adequate the way it exists now.

Mr. CHABOT. The gentleman's time has expired.

The Chair, in light of the fact that this is the ninth hearing in this—on the Voting Rights Act and we have more to come at some future point has been avoiding second rounds. However, the Chair would like to ask one question. And it's my understanding the Ranking Member has an additional question as well, so I would recognize myself for a minute.

And if I could, Ms. Pew, ask you a question, and this is again establishing—one of our principal goals here is to establish a record

in light of the fact that this may well be before the Supreme Court some day.

Let me ask you what types of discrimination do minorities sometimes continue to experience in polling places that you're aware of?

Ms. PEW. Well, it's my experience that given the outline and the guideline that was given to us in the consent decree that we've complied with and continue to, even though it is now outdated and we're not made to do that, we continue to do that, and we're not seeing discrimination. We are—we've got a robust program that is reaching out and based on the numbers of the voters that are increasing, we're not seeing the discrimination.

Mr. CHABOT. Yeah. What were the discriminations based upon in the consent decree that you—

Ms. PEW. They were based on denial. They weren't able to read the ballot. They weren't able to understand the ballot. Things were posted in the newspapers by statute, but they couldn't understand them, and that's definitely a disadvantage to someone who is not only maybe language non-speaking, but very language limited as far as even in their cultural, their native language. They don't read Navajo a lot of them.

And so it is a verbal language. It is important that all of these things be looked at. And I believe that given the outline we have in the consent decree and the things that we're still following that it needs to continue.

Mr. CHABOT. Okay. All right. Thank you very much.

The gentleman from Michigan is recognized for two additional minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. Weinberg, you've noted that there haven't been any complaints regarding federally listed voters over the last 20 years. But do we need new tools to deal with the sometimes large-scale purges of eligible voters from the voting rolls? How do we keep voters on the voter rolls if we eliminate examiners and observers—as I understand are only at the polls on election day.

Mr. WEINBERG. The Federal Observer provisions don't address all of the violations that could occur with regard to voter registration and voting. It's really—it really has to do with what happens inside the polling places on election day. But the law certainly is adequate as it stands to deal with other discriminatory actions and that would include discriminatory purges of the rolls.

Mr. CONYERS. Who would do it?

Mr. WEINBERG. The Justice Department could do it.

Mr. CONYERS. But they wouldn't have to be observers?

Mr. WEINBERG. No. No.

Mr. CONYERS. They would be what kind of personnel?

Mr. WEINBERG. It would be investigations in the normal course of business at the Justice Department, investigations by attorneys, by the FBI. That's how it works.

Mr. CONYERS. Okay. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much, Mr. Conyers.

That concludes this hearing, and I want to thank the witnesses again for their testimony. It has been very, very helpful.

If there's no further business to come before this Committee, we're adjourned. Thank you.

[Whereupon, at 2:03 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR. A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN AND MEMBER, SUBCOMMITTEE ON THE
CONSTITUTION

Despite the optimistic tone struck by our witnesses and members of this Committee, racial and language minorities still face serious obstacles to equal participation in the electoral process. During every election cycle, my staff fields numerous complaints involving election day mischief from around the country. While many simply involve hardball campaign tactics, a troubling number cross the line into questionable race politics that raises the issue of systematic suppression of the minority vote.

During the 2002 election, I referred a complaint to the Department of Justice concerning fliers circulated in African-American areas of Baltimore, Maryland, that were intended to confuse and suppress voter turnout in those communities. The flier misstated the date of election day and implied that payment of overdue parking tickets, moving violations and rents were qualifications for voting. Similarly, During the 2003 Kentucky gubernatorial election, I referred a complaint to the Department concerning reports that 59 precincts with significant African-American populations had been targeted for vote challenges by local campaign officials.

These kind of tactics have been the target of injunctive relief by the Department under provisions of the Voting Rights Act of 1957. For example, in 1990, the Department sued over a so-called "ballot security" program in North Carolina, where post-cards were mailed to African-American voters that were designed to discourage them from coming to the polls by providing misinformation about the requirements for voters. As a remedy to these allegations of voter intimidation, the parties entered into a consent decree, but the damage was done, with the major African-American candidate losing a close election.^{1/}

The failure of the 1957 Act to bring prospective relief for interference with the right to vote was the main reason behind the enactment of Sections 3, 6 & 8 for the Voting Rights Act of 1965. These provisions give the federal courts and the Attorney General the authority to monitor the procedures in polling places and at sites where ballots are counted to enforce the voting guarantees of the fourteenth or fifteenth amendments. Unlike, mere attorney coverage or election monitoring by the advocacy community, these provisions give federal monitors the legal authority to enter all polling places, and even the voting booths themselves, to provide the closest scrutiny of the elections process.

To date, a total of 148 counties and parishes in 9 states have been certified by the Attorney General for election monitoring pursuant to Section 6.^{2/} In addition, 19 political subdivisions in 12 states are currently certified for election monitoring by federal court order, pursuant to Section 3.^{3/}

On election day last week, the Department sent federal observers and Justice Department personnel to 16 jurisdictions in seven states to monitor elections, including Hamtramck, Michigan, a jurisdiction partly within my district which had an ugly episode of discrimination against Arab-Americans at the polls in 1999. In 2004, the

^{1/}Consent Decree in *United States of America v. North Carolina Republican Party*, No. 91-161-CIV-5-F (Feb. 27, 1992).

^{2/}Alabama (22 counties), Arizona (3), Georgia (29), Louisiana (12), Mississippi (50), New York (3), North Carolina (1), South Carolina (11) and Texas (17).

^{3/}California (6), Illinois (1), Louisiana (1), Massachusetts (1), Michigan (1), New Jersey (1), New Mexico (2), New York (3), Pennsylvania (1), South Dakota (1), Texas (1), and Washington (1).

Department coordinated and sent 1,463 federal observers and 533 Department personnel to monitor 163 elections in 105 jurisdictions in 29 states.

I believe that the monitoring of elections by federal observers is an important aspect of the Voting Rights Act that should be reauthorized. As prior witness testimony has clearly shown, discrimination at the polls remains a problem. Where jurisdictions have a record of discrimination or current threats exist to ballot access, minority voters should not have to wait for federal assistance to come after the fact.

Monitors play the important role of addressing concerns about racial discrimination and ensuring compliance, so that voters can rely on a fair process now, rather than waiting for litigation later.

Given the fact that the Department has trumpeted its "voter protection" programs, I am disappointed that they did not appear today at today's hearing. In numerous press releases, the Department has appeared to express a strong commitment to the monitoring program, especially in the area of Section 203's bilingual election requirements. There are questions, however, about the rising emphasis on attorney coverage, the limited number of certifications under Section 6, and whether there has been a shift in enforcement priorities. While Mr. Weinberg can act as an able proxy for the Department in most areas, only the Department can definitively respond to these questions.

Before closing, I must commend the work of the Office of Personnel Management, whose efforts at recruiting, training, and supervising election monitors is the key to the program's success. Ms. Randa, I look forward to your testimony and hope that you address ways of improving the long-term viability of the monitoring program.

E. Mark Braden
Of Counsel
mbraden@bakerlaw.com

Education:

J.D., Washington and Lee University School of Law, 1976

B.A., Washington and Lee University, 1973

Bar Admissions:

U.S. Supreme Court, 1983

U.S. District Court, District of Columbia, 2002

District of Columbia, 1989

Ohio, 1976

Summary:

E. Mark Braden concentrates his work principally on election law and governmental affairs. This field includes work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting. Each is an area in which he has substantial knowledge and unusual experience.

Mr. Braden spent ten years as Chief Counsel to the Republican National Committee prior to joining Baker & Hostetler. He has worked intimately with many elected officials, the major national political consultants and pollsters providing successful, and often highly innovative, legal guidance. For example, in campaign finance, he can rightly claim to be the father of "soft money" as now used in national political campaigns. In redistricting, he has argued successfully at the U.S. Supreme Court and has been involved in litigation across the nation. In addition to his experience in the area of federal election law, Mr. Braden is widely recognized as an authority on state election laws, having served as Chief Counsel to the Ohio Elections Commission and Election Counsel for the Secretary of State in Ohio. He has been a principal lawyer in many of the largest recounts in our political history.

Mr. Braden was a key negotiator for the site city agreements and many of the other contracts for four Republican National Conventions and has been special counsel to the House Administration Committee. He has also worked with many nonprofit organizations on government affairs issues.

Mr. Braden has testified before congressional committees and the Federal

Election Commission on numerous occasions. His experience in these areas has been recognized by numerous invitations to be a guest lecturer at universities and institutes across the nation.

Mr. Braden is a member of the adjunct faculty of George Washington University and a former Captain of the United States Army Reserve.

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U.S. ELECTION ASSISTANCE COMMISSION
VOTING FRAUD-VOTER INTIMIDATION MEETING

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Taken on the date of:

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THURSDAY, MAY 18, 2006

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Taken at the office of the EAC

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1225 NEW YORK AVENUE, NORTHWEST

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WASHINGTON, D.C.

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21 Start time: 1:00 o'clock, p.m.

22 Taken before: Jackie Smith, a court reporter

2

1 PARTICIPANTS:

2

Tom Wilkey, EAC Director

3

Juliet Thompson, EAC Legal Counsel

4

Paul Decretorial, Chairman, EAC

5

Peggy Sims, EAC Staff

6

Job Serebrov

7 Tova Wang
8 Todd Rokita
9 Robert Bauer
10 Mark Hearne
11 Jon Greenbaum
12 Benjamin Ginsberg
13 Kathy Rogers
14 Barry Weinberg
15 J.R. Perez
16 Gavin Gilmour
17 Edgardo Cortez
18 Craig Donsanto

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1 P-R-O-C-E-E-D-I-N-G-S

2 MS. SIMS: We're still missing one.
3 Our chairman and vice-chairman will be coming by
4 and participating for part of the program.
5 Right now, they are trying to finish up their
6 own meeting, a little discussion.

7 My name is Peggy Sims. I have been
8 with the EAC since April, 2004. Prior to that
9 time, I worked for 18 years with the FEC
10 national clearinghouse in election
11 administration, and I am the contracting officer
12 on this project, so that's how I got involved.

13 I would like to just quickly -- this
14 is really our consultants' meeting, but before

15 we get into that, I just wanted to review,
16 review our authority in this area. Obviously,
17 we have no enforcement authority when it comes
18 to voting fraud, but under HAVA, we're charged
19 with developing national statistics on voter
20 fraud, and methods of deterring and
21 investigating vote fraud, which we obviously
22 have to do in consultation with the folks who

4

1 actually do the enforcement.

2 We also are charged with developing
3 ways of identifying, deterring, and
4 investigating methods of voter intimidation, as
5 many of us feel is really a subset of voting
6 fraud, but it may be something when we get to
7 the definition phrase, we may want to talk a
8 little bit more about what we mean by
9 intimidation because it seems to mean different
10 things to different people.

11 The focus of this project was to do
12 some preliminary research just to get us
13 started. We selected a bipartisan team of
14 consultants to develop a comprehensive drafted
15 description of what constitutes voting fraud and
16 voter intimidation, and to perform some
17 background research, which they will review, to
18 establish a project working group, convene the
19 working group, and basically we're looking for
20 your ideas as we go along.

21 Once the working group is completed,
22 we're going to keep a transcript of this

5

1 session. We will also keep lots of notes. They
2 are going to take your recommendations and fold
3 those into a final report that goes to our
4 Commissioners. Ultimately, that report, if we
5 have any clarifications or corrections, we will
6 deal with our consultants first, and then it
7 will go to our Standards Board and Board of
8 Advisors for review and comment as well. That's
9 something that we're required to do with all of
10 our research under HAVA.

11 The purpose of the working group is
12 to collect experts in this area. We have
13 election officials, state and local, we have
14 applicants, and some serve more than one
15 function. And given the preliminary research,
16 and your expertise and EAC authority under HAVA,
17 we would like you to provide ideas as to where
18 is EAC supposed to go from here, and what should
19 we follow up with additional research, other
20 additional efforts that we can mount, given our
21 authority in this area.

22 We aren't here to debate what other

6

1 agencies are supposed to do, or what
2 organizations should or should not be doing.
3 We're focusing on what EAC can do. And one of
4 the things EAC can do is offer help to other
5 election officials, states, and other agencies
6 perhaps, but we don't have any enforcement
7 authority and we don't have any authority to

8 tell other agencies what to do.

9 Okay. What I'd like to do is just
10 start going around the table and have everybody
11 say a little bit about themselves. Most of you
12 know each other, but I also want to have the
13 ladies back here introduce themselves as well.
14 May I start here?

15 MR. SEREBROV: I don't exist.

16 MS. SIMS: You don't exist?

17 MR. SEREBROV: I'm just here for fun.

18 MS. SIMS: Then we'll have them pick
19 it up from here.

20 MR. SEREBROV: I am Job Serebrov from
21 Arkansas. I have practiced election law for
22 approximately 15 years, both in Arkansas and

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1 other southern states, and internationally.
2 I helped review and draft changes to the
3 election code in Libya. I served as an Election
4 Commissioner in Arkansas for six years. I have
5 drafted some election statutes in Arkansas
6 itself, and I was general counsel for the
7 election ballot fraud committee for the
8 Republican Party in Arkansas, appointed by
9 Hutchinson. I had an Arkansas organization
10 called Our Kansas For Fair Elections, which
11 operated for about seven years.

12 How much more do you want?

13 MS. SIMS: If you're comfortable with
14 that, that's fine.

15 MR. SEREBROV: Any other questions
 Page 5

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16 can be referred to my secretary -- no.

17 MS. WANG: I am Tova Wang. I am a
18 fellow with the Century Foundation, which is a
19 nonpartisan think tank, based both in New York
20 and here in D.C.. I have been involved in
21 politics since adulthood, but I have been
22 working on these issues since the 2000 election.

8

1 I have been working on the issues since then and
2 a career was born. With the problems we
3 continue to have, the career will be maintained.
4 I am also a lawyer by training.

5 MR. ROKITA: I am Todd Rokita,
6 Secretary of State of the State of Indiana. I
7 also do a lot of election administration,
8 election reform, and I think I can represent all
9 of the secretaries of states in the nation with
10 this sentence; it has become more and more our
11 career as well, although this secretary will
12 tell you that I don't want it to be.

13 I look for these reforms to be
14 finite, to a certain extent in length, to be
15 read as problem solved. I have other divisions
16 in my office that I would like to put some more
17 attention to, quite honestly, but we definitely
18 see the need for these reforms, at least some of
19 them.

20 MR. BAUER: My name is Bob Bauer, one
21 the partners of a law firm. I have been
22 practicing election law since 1977, and I have

9

1 experience, largely through political parties,
2 with this issue but also in other ways through
3 other conferences or professional discoveries
4 related to my area of practice.

5 MS. SIMS: Thank you.

6 MR. GREENBAUM: I am Jon Greenbaum,
7 Director of the Voting Rights Project. I am
8 actually here for my executive director. After
9 the 2000 election and problems that occurred,
10 the civil rights community saw the need for a
11 nonpartisan organization or coalition of groups
12 to deal with the problems that were apparent
13 from that election, and so Election Protection
14 was formed. The lawyers committee has
15 essentially been the legal lead of the Election
16 Protection Coalition since it's inception. In
17 2004, we had roughly 8,000 legal volunteers who
18 staffed a hot line that received 110,000 calls
19 on Election Day and 200,000 calls during the
20 election process that had attorneys out in the
21 field, legal volunteers out at the field, at the
22 polls, at legal coordinating committees, and as

10

1 mobile field units.

2 We plan on, in sort of going forward
3 since the 2004 election, we work on both
4 election protection and electoral reform issues.
5 We see those as kind of being interconnected.
6 And as one, we created something within my
7 project called the National Campaign for Fair

8 Elections, which is specifically designed to
9 work on those issues. And I want to thank the
10 EAC for inviting us to take part in this. Oh,
11 and prior to that, I worked at the Department of
12 Justice in the civil rights division in the
13 voting section with Barry, during my time there
14 for seven years, and I enforced basically all
15 the voting rights laws, all the federal voting
16 rights laws there.

17 MR. GINSBERG: I am Ben Ginsberg. I
18 a partner at Patton, Boggs, here in Washington.
19 I have been practicing election law since 1982.

20 MS. ROGERS: My name is Kathy Rogers.
21 I am Director of Elections for the State of
22 Georgia. I am one of the people who did not

11

1 intend to grow up being an election official. I
2 started my career almost three decades ago as a
3 poll worker many, many years ago, and I am very
4 pleased now to be able to, in the position I am
5 in right now, appreciate the opportunity to work
6 on this groups.

7 Those of us who are election
8 officials often enjoy reading things that
9 analysts and esteemed attorneys have put
10 together. And frequently we're the ones who are
11 trying to implement the election while taking
12 everything into account. So I think this group
13 has a great focus.

14 MR. WEINBERG: My name is Barry
15 Weinberg. I was the acting chief and deputy

16 chief of the civil rights division voting
17 section of the U. S. Department of Justice,
18 there for 25 years. I supervised the Justice
19 Department and the Federal Reserve Program, as
20 well as all kind of law enforcement, including
21 national voter registration. I retired in
22 January, 2000. Since then, I have kept some

12

1 contact going. My wife and I have an article in
2 the Temple Law Review called, Problems in
3 America's Polling Places, how They Can Be
4 Stopped," and doing some work internationally,
5 election monitoring, lecturing, seminars,
6 traveling. Before that, we were in Liberia
7 doing seminars on election dispute resolution,
8 and that has formed the basis for a book I have
9 written coming out next month called,
10 "Resolution of Election Disputes." That will be
11 the principles that can be used in election
12 challenges.

13 MR. PEREZ: I am J.R. Perez,
14 Elections Administration for a county in
15 Guadelupe, Texas. Let me give you a little
16 information about an election administrator. I
17 am neutral because the position is hired by
18 three out of five commissioners, and fired four
19 out of five. I have got a lot of autonomy and
20 it makes it easy for me to be independent and
21 implement policy that is not necessarily
22 political and going with the current flow, but

13

1 it has allowed me a lot of durability in the
2 trenches. I have been doing it for about four
3 years in the front line. If anybody has been
4 around election like you all have, you know on
5 the front line there's casualties coming and
6 going on a regular basis.

7 I am hoping that I can bring any type
8 of insight to you, in terms of how we handle
9 those incidences of those telephone calls, and
10 how we can hopefully explain the difference
11 between the theoretical concept of election and
12 the actual practicality of election, because
13 there is a great distinction in a lot of
14 people's minds. They don't necessarily
15 understand what we're trying to accomplish, and
16 they have a lot of confusion in terms of how
17 we're doing it, why we're doing it, why it's not
18 living up to the mythical dream that a lot of
19 people put it into.

20 MR. CORTES: Edgardo Cortes. I am an
21 election research specialist here at the EAC. I
22 have been here since July of last year. Prior

14

1 to that, I did some campaign work and also ran a
2 national voter registration campaign focused on
3 the Latino community.

4 MR. DONSANTO: I am Craig Donsanto,
5 with the election branch of the U. S. Department
6 of Justice. I have been practicing election law
7 since 1972. I am responsible for overseeing all
8 investigations and prosecutions brought in the

9 United States at the federal level involving
10 voting and the financing of political campaign.
11 I have a member of the EAC's Board of Advisors,
12 and I have also, as Barry alluded to, done quite
13 a bit of work internationally, both with him and
14 occasionally without him, helping emerging
15 democracies write election laws.

16 MS. SIMS: Thank you.

17 I just want to introduce the woman behind me
18 because they really helped us pull this meeting
19 together. Without their support, we wouldn't be
20 where we are right now.

21 We have got Elle Culver, who is a
22 special assistant to Commissioner Davidson. We 15

1 have got Devon Rome, missing who is an intern
2 working on her masters degree in social science,
3 sociology. Thank you.

4 Laiza, I forget where you are.

5 LAIZA: Soon to begin the masters in
6 political science, which I work in the research
7 department, and I'm going to get to know some of
8 the election officials because I will be
9 conducting a 2006 election survey. So you will
10 get to see plenty of e-mails from myself.

11 MR. ROKITA: Surveys, love them.

12 MS. SIMS: I would like you to tell
13 me, I notice you have served as a legal intern.
14 Tell us where you are in that process.

15 TAMAR: I just finished my second
16 year of law school at George Mason, and I have
Page 11

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17 been at the EAC for a year.

18 MS. SIMS: Now, I know on our agenda
19 it mentions we would talk about other EAC
20 projects but it dawned on me that might be more
21 appropriate later on, just before we get to
22 ideas for future EAC action, because then I can

16

1 review things that we're already doing. So we
2 won't spend a lot of time and go on to what we
3 still need to do.

4 MS. WANG: I'm going to try and
5 briefly over go over the work we have already
6 done. You got sent tons of material, and I'm
7 not sure if anybody looked at it, but hopefully,
8 you looked at at least the paper summaries of
9 things.

10 The first thing I really want to
11 emphasize about the work that we did, although
12 we split up some of the work, everything that we
13 produced was signed off on by the other person.
14 Everything that you're seeing here is a product
15 in that sense. We agreed on the steps that we
16 would take to produce these materials.

17 And the second point you should bear
18 in mind is, Job and I pretty much worked on this
19 entirely alone, without any support staff. So
20 if you see typos on things, I apologize for
21 that.

22 Generally, the time period that we

17

1 covered in the research we were doing was
2 January 1 of 2001 to January 1 of 2006, all
3 those, Job's cases, went before that a little
4 bit, the reason being, it would be too unwieldy
5 to try and sort through all the materials that
6 came out of the 2000 election because there is
7 just so much, and there's been so much since
8 then that it seems sort of a natural place to
9 begin. And also the Help America Vote Act had
10 been passed subsequently, so it seems like maybe
11 improvements had been made and we should take it
12 from there.

13 The first thing I think on the
14 agenda, that we should talk about the literature
15 and the reports that we went over. We tried to
16 do a review of all the existing research we
17 could find on this topic. I think you have a
18 list of all the pieces that we looked at. On
19 the CD is the summaries we looked at. We looked
20 at a range of things; Government documents,
21 academic studies, reports from advocacy groups.

22 As to how we chose the pieces that we
18

1 reviewed, to some extent, I already had a lot of
2 them and knew about a lot of them because I had
3 been working on this for a while. Other people
4 suggested them and we did searches for anything
5 that we might have missed after that.

6 So just to maybe go over some of the
7 highlights, I don't want to go into the details
8 of the existing literature too much because they

9 are really sort of all over the place. There
 10 are a couple things that I will say about them
 11 generally that I talk about in the summary,
 12 which is, that they are mostly anecdotal. This
 13 is no surprise to any of us sitting here. There
 14 is really little research that is scientific or
 15 systematic, which is part of the reason this
 16 project was undertaken. I saw McDonald work as
 17 the most systematic, but those probably don't go
 18 far enough. And I talked to a number of
 19 researchers about this, and I think one thing --
 20 and I will get more into this when we talk about
 21 the methodologies that I suggested -- this is a
 22 very difficult undertaking, I think we all

19

1 realize this. To do it right in any kind of
 2 scientific way would require tremendous
 3 researches, mother than any academic or advocacy
 4 group, that is. It is my personal believe, and
 5 I have been told, there probably will be a
 6 second phase to this that will maybe commit the
 7 resources that are necessary to do it right.

8 The one other thing that I will say
 9 about the existing research that we looked at is
 10 that I think, by the nature of them, there is
 11 very little follow-up. So you have books and
 12 reports that make a number of allegations of
 13 things that happened in a particular election,
 14 but then you don't have the benefit of then
 15 hindsight, to see what actually ended up
 16 happening in the case. So you have

17 investigations of acts of something happened,
18 but you don't know if that ended up being an
19 administrative error or it ended up being
20 someone just crying wolf. While literature is
21 helpful, it really only takes you so far.

22 Are there any questions about that or
20

1 anything you want to comment about the
2 literature review that we've done?

3 MR. ROKITA: What's our current
4 budget for this project, and why do we think
5 there is going to be a Phase 2?

6 MS. SIMS: Well, Phase 2 would be
7 subsequent to the fiscal year, after we have
8 gone through the final report, that would
9 include the recommendations for future action.

10 MR. ROKITA: So that would be a vote
11 from the standards board?

12 MS. SIMS: I would have to ask the
13 Commissioners that are actually handling the
14 details of that. I'm not sure it actually takes
15 a vote, but generally, it requires some comment
16 by the boards. The boards absolutely have to
17 have input on that.

18 MR. ROKITA: So if I understand, part
19 of our charge here is to give some direction for
20 this phase?

21 MS. SIMS: What we're looking for
22 from the working group is to brainstorm ideas

21

1 for possible future research. We may combine
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2 them into one or we may have different stages,
3 depending on what ideas come up and what the
4 Commissioners think that we can do, and our
5 Boards of Advisors and our Standards Board.

6 MR. ROKITA: So we're supposed to
7 think of these ideas, unbridled by any fiscal
8 constraints?

9 MS. SIMS: Yes. We'll have to worry
10 about the fiscal aspect when we get to that
11 point.

12 MR. GINSBERG: And our commission is
13 all about research.

14 MS. SIMS: We can provide
15 information. A lot of that is done through
16 research. We do research and provide the
17 results of that research to state legislatures
18 and anybody else who is interested. Now, you
19 have to realize, I came from the FEC where we
20 were hidden away. The office, six of us, that
21 was the whole office. Now, we have much more
22 visibility. So it is easier to get the word

22

1 out, get information out, but a lot of times
2 that information is based on research. We do
3 have to have some kind of research before we can
4 pass the information along, in terms of best
5 practices. It could be things -- well, we may
6 want -- I am jumping ahead of myself, but when
7 we get to the ideas on subsequent research, we
8 can talk about some of the findings that these
9 folks came up with, just in this limited

10 preliminary research, and what we might be able
11 to do with that, or what we might be able to
12 build on that already exists, but yes, we're
13 focusing on research, and that research does end
14 up being distributed via our website or in
15 response to individual inquiries.

16 MS. WANG: Ultimately, it could
17 result in something like guidelines or
18 recommendations or best practices.

19 MS. SIMS: And that all goes up on
20 our website.

21 MR. SEREBROV: We all introduced
22 ourselves. You've got the floor.

23

1 MR. HEARNE: I am Thor Hearne. I am
2 an attorney. I have practiced in the election
3 law area for a number of years now. I have been
4 involved in a number of different litigations,
5 as well as efforts on that front, counsel to the
6 American Center For Voting Rights.

7 MS. WANG: The only thing of
8 substance we have gone over, I was just
9 reviewing the literature that we had reviewed
10 and summarized what you have in your own
11 materials. Also in your materials, you have a
12 list of the people that we interviewed, and on
13 the CD, you have summaries of the interviews
14 themselves. Most of these interviews were
15 extremely informative and very helpful,
16 insightful. We chose the interviewees by coming
17 up with the categories of types of people we

18 wanted to talk to, and filled those categories
19 with equal numbers from each of us.

20 MR. SEREBROV: Unfortunately, not all
21 the people we wanted to talk to talked to us.

22 MS. WANG: Right. But also due to 24

1 time and resource constraints, we came up with
2 an original list, ten miles long, people we
3 would love to talk to.

4 There were certain categories that we
5 had to eliminate. For example, we don't have
6 any local DAs, again which is something for
7 later on that I would definitely advocate that
8 the next phase do. The ultimate category the
9 people we were able to talk to included
10 academics, election officials, lawyers, and
11 judges.

12 There were a few people who didn't
13 want to talk to us, mostly judges.

14 MR. SEREBROV: Although one did.

15 MS. WANG: We got one judge. Again,
16 all the interviews were conducted by both of us.
17 We split up the drafting of the summaries, but
18 they were reviewed and approved by the other
19 person, so they represent our impressions of the
20 interviews, both of us.

21 Just to go over quickly some of the
22 highlights from those interviews that I have in 25

1 the summary that you have of the interviews, we

2 did find pretty much, overwhelmingly, that
3 absentee fraud is the biggest problem, and vote
4 fraud would come in behind that. There was
5 widespread polling place fraud. Dead voting,
6 impersonation voting, there were a couple people
7 who thought that was a problem. Most people did
8 not.

9 In terms of intimidation, the whole
10 issue of challengers pre election and election
11 day challengers, decidedly most often as the
12 current concern in terms of intimidation.
13 However, at some of the more what we think of as
14 classic examples were brought up with us,
15 particularly very starkly in Native American
16 communities.

17 There was also the usual poll worker
18 harassing people, people taking pictures of
19 voting, and that kind of thing. With all due
20 respect to the people from the Department of
21 Justice here, the people we interviewed told us
22 that for various reasons, the Department of

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1 Justice is bringing fewer cases now and is
2 focusing much more on non-citizen voting, felon
3 voting, and double voting, while the civil
4 rights public integrity section is focusing on
5 individuals and isolated instances of fraud
6 issues. And I know you don't agree with that,
7 but that's what across the board, people from
8 all sides of this said to us. That's the
9 perception. As usual, the voting lists were a

10 major concern, although, hopefully, that is
11 being taken care of by the state registration
12 databases.

13 Among the common recommendations,
14 getting back to the point we were just talking
15 about, many of the people we interviewed
16 supported stronger criminal laws, increased
17 enforcement of existing laws. Advocates from
18 across the spectrum expressed frustration with
19 the failure of the Department of Justice to
20 pursue more complaints. Mr. Donsanto told us
21 they were bringing fewer Section 2 cases, but
22 fewer were warranted, a lot had been achieved

27

1 and it wasn't as much as problem. Mr. Donsanto
2 told us election fraud cases had not gone up
3 since 2002, but the number of cases the
4 department is investigating and pursuing has
5 gone up dramatically, and that since 2002, the
6 department has brought more cases against alien
7 voters, double voters, than ever before.

8 In terms of more recommendations, a
9 couple of people suggested some kind of new law
10 that would make it easier to criminally
11 prosecute people for intimidation, even when
12 there is not racial interments involved. People
13 were hopeful about the statewide voter
14 registration databases. People advocated for
15 expanded monitoring of the polls, hopefully, by
16 the department or maybe others.

17 There were a number of people who

18 suggested that the challenge laws needed to be
19 revised in some states. I was surprised to
20 learn, in some states, you can challenge a
21 person with little to no basis for doing so, and
22 really sort of bog up the estimation that way.

28

1 There ought to be some serious look at the
2 various challenge laws, and the ones that have
3 that kind of thing going on that shouldn't be
4 happening. People advocated for the deceptive
5 practices bill currently sponsored by Burrock
6 Obama. There was a surprising split whether
7 partisan administration of elections would be
8 helpful. Some people felt it was a good idea
9 and some people thought partisan people, without
10 the partisan tag. Some academics were
11 advocating for going back to for cause only
12 absentee voting, but that didn't seem
13 politically practical right now. Two people
14 advocated a national identification card.

15 Anything I can answer? The great
16 nexus undertaking adventure. Initially, Job and
17 I came up with enormous search terms that could
18 be used to try and do a nexus search that would
19 come up with every case of fraud and
20 intimidation that happened in the last five
21 years. We determined quickly that would be
22 impossible. We agreed I would do the nexus

29

1 search, trying to be a little more creative,
2 using different combinations of terms that would

3 hopefully yield the same kind of result. Job
4 approved all of the search terms as I went
5 along. As I collected them, and you have this
6 on your CD, I have them on Excel spread sheets
7 to try and break down the articles so they can
8 be analyzed for patterns.

9 Each fraud was broken down by where
10 it took place, the date, what the allegation
11 was, the news publication it came from, and
12 where there was a follow-up article, whether
13 there had been any subsequent resolution to the
14 allegations. I am currently working on further
15 refining those, and I don't have it to produce,
16 to try and break it down more carefully, analyze
17 it. I want to include sub categories. So, for
18 example, when you're talking about absentee, you
19 have it broken down whether it was forgery of
20 that person's name or something like that. I am
21 also trying to refine it so you can see from the
22 chart who made the allegation, whether there was
30

1 any type of investigation, criminal, civil
2 action taken, whether there ought to be
3 follow-up research to determine what happened in
4 the case. For drawn out, complicated cases, you
5 have a description of the case. South Dakota,
6 Wisconsin, and Washington State.

7 Just to go over the highlights again
8 of the articles, none of this has come as news
9 to you, there are a bunch of ways that absentee
10 ballot fraud is committed. This was one area in
Page 22

11 news articles, there were a substantial number
12 of official investigations and actual charges
13 filed. In terms of voter registration files,
14 again, you won't be surprised by the variety of
15 ways in which people commit voter registration
16 fraud using fake names, names of dead people.
17 You also have voters being tricked by a
18 particular party under false pretenses and also
19 the description of voter registration forms,
20 depending on your party. There was only one
21 article of a non-citizen registering to vote.
22 And, in general, many of the instances did

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1 include official investigations and charges
2 filed, but from what I found in the initial
3 search, few actual convictions.
4 On voter intimidation and
5 suppression, this is a very thick chart because
6 there were so many allegations during the 2004
7 election, particularly on the challenge issue.
8 Almost none of these cases of intimidation that
9 were claimed in these articles were investigated
10 criminally or prosecuted criminally. And like I
11 said, with respect to the existing literature
12 and the interviews, challenges, that was the
13 number one topic but there was also, again, the
14 classic examples of photographing people leaving
15 the home, police presence, that kind of thing.
16 And also it wouldn't surprise you to know most
17 of these articles came out of battleground
18 states.

19 In terms of dead voter, there were a
20 lot of people voting in the name of the dead,
21 big numbers of people committing these
22 frauds, and relatively view of these allegations 32

1 turned out to be accurate, in terms of the
2 verifications by the newspapers themselves,
3 election officials, and criminal investigators.
4 Often the problem turned out to be the result of
5 administrative error, poll workers mismarking
6 lists with the names of the people who voted.
7 There were a few cases of actual charges and
8 convictions of people voting or engaged in these
9 kind of activities. Interestingly, it seemed
10 that most of those cases involved the person
11 voting by absentee and voting again at the
12 polls. There were a handful of instances where
13 people voted early, and voted on Election Day,
14 although some of that seemed to be confusion
15 about what you are allowed to do.

16 There were a number of vote fraud
17 cases, and these are completely focused in the
18 midwest and the south. And you will see in the
19 vote buying summary that's in there, three or
20 four locations where this seems to be a
21 perennial problem, and it doesn't seem to be
22 that much of a problem in other parts of the 33

1 country.

2 Deceptive practices, we saw a lot of

3 that come out in 2004. You probably all heard
4 about it the fliers, and the phone calls with
5 miss information about voting procedures. A
6 disproportionate number of them from
7 battleground states, in Florida, Ohio, and
8 Pennsylvania, only one case, and this is just
9 from news articles, was actually investigated.
10 That was the case in Oregon where the FBI did
11 investigate the destruction of voter
12 registration forms that were filled out by
13 people and then destroyed allegedly, according
14 to one party, but there were no other reports of
15 prosecutions on this case or on any of the other
16 deceptive practices cases.

17 There were surprisingly few articles
18 about non-citizen voting, something you heard a
19 lot about, but not something that seems to
20 happen very much.

21 On felon voting, there were only 13
22 actual cases, but they all involved rather large

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1 numbers of people. You probably know this. A
2 lot of it is coming out of the Washington State
3 situation and the Wisconsin situation.

4 And, finally, with respect to fraud
5 being committed by election officials, I think
6 that's very hard to judge from news reports
7 because it is very difficult to make that
8 distinction between something was in error and
9 when something was done purposely and with
10 malfeasance in an actual crime. So that's

11 probably not the best way to look at that, and
12 that's what I have for that.

13 And, again, I know this is jumping
14 ahead, but I will say it now because I feel the
15 need to. These search terms that we used and
16 what these search terms came up with, and there
17 may be subsequent articles about these that
18 would go further in telling you how the actual
19 allegation was resolved, whether it turned out
20 to be accurate or not. One of my main
21 suggestions that I will talk about more later
22 on, if there is a next phase of this, that using

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1 the charts that have already been created to
2 follow up nexus research to see if there were
3 further articles about the same cases to see
4 what happened. Because although I have a slot
5 in there, a column in there for subsequent
6 resolution, you will see it's not filled in very
7 often, and that's it.

8 And if there are any questions.

9 MR. ROKITA: Can you just review for
10 me what the purpose of gathering all this was,
11 in relation to our statutory guideline here?

12 MS. WANG: Well, we're trying to just
13 sort of get the lay of the land on this issue.
14 And, obviously, doing the nexus search alone
15 would not have provided that but we felt it
16 would be one useful tool in trying to do an
17 initial gauge of what's going on, also,
18 including the interviews, including the existing

19 research and the cases that Job will be talking
20 about.

21 MR. ROKITA: And the interviews we
22 had, we asked them for their ideas for

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1 developing nationwide statistics and methods of
2 identifying or developing ways of identifying or
3 deferring, investigating voter intimidation, or
4 did we just try to get color from them as to
5 what the main issue was?

6 MS. WANG: No. We asked every single
7 person we talked to what their thoughts were on
8 how to improve the system, what ought to be done
9 to reform it and solve some of these problems.
10 It was an open-ended question. We didn't say do
11 you favor the development of national statistics
12 or something.

13 MR. ROKITA: Or how you would do it.

14 MS. WANG: That I will talk about
15 later. We limited that aspect of it to talking
16 to people who were basically political
17 scientists, who I think are in the best position
18 to tell us what is a scientifically sound method
19 for trying to get some kind of accurate take on
20 this.

21 MS. WANG: Chandler Davidson, and I
22 have the list with me. It talks about other

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1 political scientists for the methodology issue.

2 MR. SEREBROV: Aside from DOJ cases,
3 closed DOG cases, which were put in a separate
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4 chart initially, I came up with a laundry list
5 of search terms, and then Tova looked at that
6 list and added another list of search terms.
7 So by the time we got it to the Commission to
8 run the electronic search, the terms were
9 probably two pages long. And what, in essence,
10 we came up with was the first hundred cases for
11 each term. The result was about 44,000 cases
12 that I had to go through and ferret out, and
13 these were both federal and state cases, federal
14 where both a felon, and the district cases,
15 state cases were only appellant cases. These
16 were all cases that impact on some aspect of
17 voter fraud or voter intimidation. What emerged
18 from this was almost striking because there were
19 very few cases of the 44,00 cases or so that
20 actually were on point. And the ones that are
21 on point sometimes repeated categories. They
22 are all in these chart forms.

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1 what I suggest is done in the next
2 phase is to concentrate on finding cases on the
3 state district court level, because it seems
4 like on a state level, a lot of voter fraud
5 cases are brought there and end there. And you
6 get a lot of information out of those cases, but
7 they are never appealed, so you never get
8 anywhere beyond that.

9 without having to just go through
10 this and verbatim read, the patterns have
11 definitely shifted from outright stealing of

12 elections in the past to different kinds of
13 problems, voter registration, identification,
14 ballot counting, overseas ballot problems, vote
15 buying, challenges to felon eligibility to vote.
16 And those were really the main categories that
17 went into the charts. And what I was surprised
18 to find is that out of each search term and the
19 cases under it, we had literally dozens and
20 dozens that were inapplicable. Oh, and I need
21 to add a caveat, in general, not all the time,
22 but in general, when we had an election

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1 challenge case, in other words, someone lost an
2 election and they were challenging, we almost
3 always threw those out, unless they presented a
4 unique situation that directly was impacted by
5 the search term itself. In other words, if it
6 wasn't just -- I won, you lost, but the reason
7 was because there was X fraud done.

8 MR. SEREBROV: Right. So we threw
9 out 99 percent of those cases. What we have are
10 a number of charts with few cases, surprisingly
11 few cases. And my suggestion at the next phase,
12 they do a nationwide sampling of state cases on
13 the district court or circuit court level to
14 find out really what's going on.

15 Any questions?

16 MS. SIMS: No questions from the
17 attorneys?

18 MR. ROKITA: How would the sampling
19 be done.

20 MR. SEREBROV: Good question. What I
21 think you need to do is actually go, pick both
22 large counties and small counties, and you need 40

1 to go to the counties and you actually need to
2 run the records, and you need to go back a
3 certain amount of years and start looking at
4 those files. You're looking at a lot of work, a
5 lot of money going into this, but what we found
6 at that level is inadequate to draw conclusions,
7 unfortunately.

8 And as Tova said, I asked four
9 different Supreme Court Justices to give us
10 interviews. Three of them were afraid because
11 this type of case may come up again.

12 MS. WANG: Although not really too
13 much.

14 MR. SEREBROV: No, but it was very
15 helpful in some other areas.

16 MS. SIMS: We're five minutes ahead
17 of schedule. I don't know if you want to go
18 through this definition or the findings first.
19 Let's do the findings, I guess, first.

20 MS. WANG: So the next thing on the
21 agenda is to hear back from all of you about
22 your perceptions, given the research that we 41

1 did. I know that all of you have tremendous
2 backgrounds in this, and we all come out with
3 different experiences, but I think today it

4 would be helpful to focus -- the first question,
5 I guess, is basically, given the research and
6 the findings that we have, what at this point do
7 you think we can say about how much fraud and
8 intimidation there has been since the 2000
9 election, and how much are certain frauds being
10 committed as opposed to others?

11 what is your sense of what the
12 landscape is, anybody?

13 MR. WEINBERG: I have a question to
14 you. Given all this work that you have done,
15 and it's a lot of work, what do you think is
16 missing?

17 MS. WANG: That's what I need to ask
18 you.

19 MR. SEREBROV: That comes later, we
20 ask you that. We have talked about this.

21 MS. WANG: We have talked about steps
22 for further action, but are you thinking of

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1 something specific?

2 MR. WEINBERG: Do you feel like
3 there's areas of information that exist that you
4 just didn't get to or do you feel like you, in
5 your breath of what you did, sort of captured
6 the information that's available out there?

7 MS. WANG: Well, I think we will talk
8 about this when we talk about further steps.
9 They are kind of interrelated, but I feel like
10 in terms of the nexus articles and the
11 literature, I want follow-up on all of them

12 because a lot of them came out of the 2002, 2004
13 elections where there was a lot thrown around.
14 A lot of statements are made.

15 One of the things that we said about
16 the literature is that the books that are
17 written are of the least use because they have
18 written by people with agendas on both sides.
19 Allegations are made of things happening. And
20 even I started to do just like for fun kind of
21 looking at the allegations made at some of the
22 books and reports, and doing my nexus search,

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1 and Google search, and finding out a month later
2 there was a completely opposite allegation than
3 what was suggested in the book on the report.
4 That's what I feel like is missing because
5 that's how the misinformation that's out there
6 about what's really going on seems to be, is
7 that people make a certain assumption right
8 after Election Day, and I will tell you
9 something, and this is sort of going off point,
10 but I think actually journalists are actually
11 somewhat responsible for this themselves.
12 I know this will amaze you that journalists can
13 be -- I'm trying to work on a separate project
14 and they will write an article. There was X, Y,
15 and Z, happened on Election Day, and then it
16 turns out three weeks later that actually
17 something completely different happened, but
18 they don't report on that. Or it's like this
19 side, the first one was on the front page, not

20 that this is particularly relevant. I am trying
21 to get a grant to do journalist training
22 seminars on these issues to try and solve some

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1 of the problems, but almost everybody does it.
2 I mean, the stuff that lawyers committee comes
3 out with, great. The ACVR came out with its
4 report, but that's a snapshot in time, so
5 whatever happened did not turn out to be true.

6 MR. SEREBROV: One thing we left out
7 were allegations. We did not handle any
8 particular allegations.

9 MS. WANG: It was too much.

10 MR. SEREBROV: And that's something
11 that in the next phase, we may want done.

12 MR. HEARNE: What's the distinction?

13 MR. SEREBROV: We handled things that
14 have become legal issues that went to trial.

15 MS. WANG: That's not really true.
16 The articles is just everything that came out.

17 MR. HEARNE: It sounds like your
18 search would pick up somebody alleged something,
19 it gets reported in the paper. That would be
20 picked up.

21 MS. WANG: What's in the charts, as
22 you have them in and out. There is a category

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1 for subsequent resolution. As I am suggesting,
2 what I would love to do actually, if we had the
3 resources today, is now do a new nexus search
4 that would specifically search for those cases

5 and see what the follow-up was. I was limited
6 because we had an agreement on what search terms
7 were. I couldn't go beyond that to look
8 specifically to see if there was in this case
9 some kind of further reporting.

10 So it was an allegation. Obviously,
11 the cases were more official than that.

12 MR. SEREBROV: When we discussed this
13 in the beginning, we were not going to deal with
14 hundreds and hundreds and hundreds of
15 allegations out there, except the nexus
16 articles. That's something that one may or may
17 not want to deal with. It's very tricky. You
18 have to weigh the voracity of those allegations.

19 MS. WANG: And how do you do that.
20 It's a problem we talked about with a lot of
21 people we interviewed, how do you make that line
22 of distinction between what is simply someone

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1 saying something, and something that at least
2 has a kernel of merits.

3 MR. SEREBROV: For instance, we
4 talked to Sharon Priest. She was Secretary of
5 State from Arkansas. She indicated that the
6 State Board of Election Commissioners had
7 fielded, over a certain amount of years, a
8 number of complaints, and they gave those to us
9 but we didn't go through each individual
10 complaint.

11 Now, that's something that may or may
12 not be a valid thing, but if states keeps those

13 complaints on file, if they are categorized, if
14 there is enough information, that may or may not
15 be something that one wants to do. It's almost
16 an adjusting linkage. The problem is people
17 call in all the time, as Peggy well knows.

18 when I was an election commissioner,
19 people called in and complained about everything
20 from my dog was stealing votes to --

21 MS. WANG: Or my dog voted.

22 MR. SEREBROV: Obviously, the

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1 machines have been frauded out, and where do you
2 draw the line between a valid one and non-valid
3 one.

4 MR. PEREZ: I realize I am a resource
5 person but I'd like to make a comment. I was
6 very skeptical before I came to this group
7 because of the issue, but I agree wholeheartedly
8 with your research. I am glad you did it. The
9 summaries, I think, were right on, and your
10 notes here about structural forms of
11 disenfranchisement and internal abuse of the
12 system, you're hitting right on the key here.

13 Most of the issues are not that
14 somebody is stealing votes. It's just that poll
15 workers are not trained properly. We see this
16 time and time again. I am glad to see that
17 you're coming out with the same conclusions that
18 we have on the front line. It's not so much
19 that there is a conspiracy. You're going to
20 have vote buying. You're going to have some of

21 the things, but generally negligible, not enough
22 to alter things. And if there is, they need to

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1 be prosecuted and come up with stronger laws.
2 But those of us that do this time and time again
3 can see where people have just missed the boat
4 in preparing either the people, the equipment,
5 the programing or something, and the obligation
6 should be laid squarely on the election
7 official, not on the equipment.

8 MS. WANG: Or the voter.

9 MR. PEREZ: Or some other type of
10 issue. we're playing the process on their
11 shoulder, and not necessarily training them
12 properly. So I am glad to see you're
13 researching.

14 MS. WANG: Actually, I think I
15 skipped over it but I was talking about the
16 interviews. One of the most common things that
17 was said was, generally, poll worker training,
18 that could be the number one key to solving the
19 problems we're talking about, and also longer
20 voting times, and maybe having days other than
21 Election Day that you can vote, not necessarily
22 in terms of early voting, but like weekend

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1 voting. Maybe combine this with fewer voting
2 locations, because the thought was that you
3 could then have the best and the brightest of
4 the poll workers. That's something for another

5 study.

6 MR. SEREBROV: They are actually
7 doing that in Arkansas. I didn't even know we
8 had Saturday voting. We crossed a poll that was
9 open, so I went in and voted. They have opened
10 several, not a lot, but a few polls for Saturday
11 voting.

12 MR. GREENBAUM: Would it be fair to
13 say that taking up the issue of intimidation
14 that you're finding suggests that most fraud
15 occurs outside of the polling place?

16 MS. WANG: I would say yes, right.
17 It's absentee ballot fraud which is troubling
18 because there is this huge movement to expand
19 that, frankly. And so while I think this is
20 also probably going beyond what we're supposed
21 to be talking about right now but, why not,
22 everyone else is doing it. That is a political 50

1 issue that I think is not going to go away.
2 People seem to be pushing relentlessly for mail
3 voting or more absentee voting, on both sides of
4 the spectrum actually.

5 MR. GREENBAUM: I am including, when
6 I say fraud, I am including all deceptive
7 practices, the fliers, the calls, all of those
8 things that came up during election process in
9 2004.

10 MS. WANG: No. Well, there were
11 people talking about poll workers engaging in
12 fraud. Are you saying taking away the voter

13 intimidation?

14 MR. GREENBAUM: I'm saying take out
15 the voter intimidation issues, in terms of the
16 issue of fraud, in terms of the other things on
17 both sides, whether you're talking about voters
18 committing voter fraud or whether you're talking
19 about actions that are designed to keep voters
20 away, from deceptive practices, tearing up
21 registration forms, those sorts of things. Most
22 of that is happening outside of the polling

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1 place.

2 MS. WANG: I would agree with that.
3 That's what almost everyone says.

4 MR. ROKITA: Thank you. I'd like to
5 have a little bit of discussion around before we
6 go too far down, subsequent matters, because I
7 may be a little bit confused, figure out what
8 our enabling legislature is here. I am reading
9 the cover letter of my invitation, and I'll read
10 it into the record, if you will bear with me.
11 "Section 241 of the Help America Vote Act of
12 2002 requires the EAC to conduct research on
13 election administration issues."

14 Yes. Among the tasks listed in the
15 statute is the development of the nationwide
16 statistics and methods of identifying,
17 deterring, investigating, voting fraud in
18 elections for federal office, 241(e)(6), and
19 secondly, ways of identifying, deterring, and
20 investigating methods of voter intimidation,

21 241(b)(7).

22 And this kind of goes to the reason I
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1 asked the question about the interviews. I'm
2 hearing conclusions here about whether or not
3 the EAC is going to determine whether or not
4 there is voter fraud and where. And the statute
5 seems to point out, it is assuming, whether
6 right or wrong in the statute, Congress will
7 assume voter fraud existed, and it is asking the
8 EAC to develop nationwide statistics and methods
9 of identifying, deterring.

10 MS. WANG: That's what we were going
11 to try to do. We're not making the assumption.
12 We're not saying there isn't fraud. We're
13 trying to get a grasp of where that fraud tends
14 to lie and what types of fraud actually seem to
15 be occurring. I don't think that you can get to
16 the point of identifying these other matters
17 that you referred to in the statute without
18 first doing the research to find out what is
19 going on.

20 MR. ROKITA: It's not a comment on
21 your research, whether it's good or bad, right
22 or wrong, but I am trying to get us focused on
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1 our mission here. From the preliminary comments
2 I am hearing, it's whether or not there is fraud
3 and where it is. And I think what you mentioned
4 in your opening remarks is that we lack
5 statistics. We lack methods for getting to
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6 these statistics. And I would just like some
7 feedback and input from this group as to if they
8 agree or not that that should really be the
9 focus, more developmental ideas how to get the
10 information, rather than opinions of
11 interviewees.

12 MS. WANG: This is an initial
13 methodology. This combination of not just
14 interviews but nexus of the cases is an initial
15 step in a methodology. Later on, I will be
16 going through with I found with the political
17 scientists, further findings from more
18 scientists with the methodology that can be
19 added on to what we have already done. That is
20 the next layer up.

21 MR. SEREBROV: The other thing you
22 have to understand is we were limited in both

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1 time and funds. So what we were able to
2 delivery is just a peek at what's going on.

3 MS. SIMS: It is only intended a
4 preliminary research so we can decide how might
5 we get to the next step, and that's why we need
6 you in here to help us.

7 MR. SEREBROV: One area that we
8 didn't touch that we were told don't touch is
9 complaints or potential fraud having to do with
10 computer voting with the machines themselves.

11 MS. WANG: Thank God.

12 MR. SEREBROV: That's true. That's a
13 can of worms.

14 MR. HEARNE: I wasn't here the first
15 15 minutes. My cab driver was somewhat lost,
16 but that being said, so I didn't get the
17 opportunity to hear exactly what the discussion
18 was about the work product. At the end of the
19 day, we have an objective of producing
20 something.

21 I understood todd to be saying what
22 we're supposed to be producing is given what

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1 information we have and the consensus within
2 this group, what is a methodology for tracking,
3 quantifying, and reporting these kinds of
4 incidences going forward.

5 MS. SIMS: Well, you may not even
6 have to come up with a methodology. What we're
7 looking for, how do we meet this requirement.
8 Or as I said, we also serve as a national
9 clearinghouse for the administration of federal
10 elections. There may be things that relate to
11 this that we should be looking at, that relate
12 to the issue of voting fraud. There may be best
13 practices in certain areas that we maybe should
14 be looking at that we haven't already started to
15 look at.

16 MR. HEARNE: So the EAC is coming in,
17 the working group says, give us some ideas.

18 MS. SIMS: Where we need to go.

19 MR. HEARNE: Tracking as we go
20 through.

21 MS. SIMS: Please don't use a
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22 four-letter word when you say where we need to 56

1 go.

2 MR. BAUER: You made a comment. Did
3 you have a concern about consulting experts?
4 You were concerned we were talking to experts,
5 getting opinions from experts, or you thought it
6 was a methodological approach.

7 MR. ROKITA: I'm just trying to
8 determine what our mission here is at the core
9 level and whether it should be making a
10 conclusory report as to whether or not something
11 exists, or is our mission more plain language,
12 the development of the methodologies that would
13 lead to something like statistics and
14 methodologies, not an amalgamation of opinions
15 as to whether or not voter fraud exists and
16 where it is. Because we could keep adding to
17 that, then we're putting the EAC -- or EAC is
18 going to be in a position of saying -- of adding
19 to the universe of opinions.

20 MS. WANG: These are actually not
21 just opinions. If you look at the people we
22 spoke to, there were election officials. 57

1 MR. ROKITA: All of whom have
2 opinions. Yes, I understand.

3 MS. WANG: Well, opinions based on
4 actual experience.

5 MR. BAUER: That's what my question

6 was.

7 MR. SEREBROV: But it is a method of
8 identifying election fraud.

9 MS. WANG: Any political scientist.
10 And if you look at the methodologies that were
11 suggested to me, every single one of them talks
12 about interviewing a range of people involved in
13 the process.

14 MR. ROKITA: These might be
15 experiences.

16 MR. SEREBROV: We originally had a
17 political scientist on this group, a third
18 person who had to withdraw, and that is Steve,
19 who we actually interviewed after.

20 MS. SIMS: He can speak for the EAC
21 that we're not expecting the group to say there
22 is or there is not fraud. We're not expecting

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1 that. I think we know there are instances of
2 it.

3 At this point in time, what we're
4 trying to do is get a handle on how we can
5 develop nationwide statistics, and investigating
6 voter fraud and voter intimidation.

7 MS. WANG: To know how to investigate
8 and deter fraud and intimidation, you have to
9 first get some sort of a grasp as to what the
10 actual problems were, and where your energy and
11 resources ought to be focused.

12 MR. ROKITA: Yes, you have to do
13 that. I am not basing things after our

14 experience, but we don't know that this
15 experience is a fair sampling of what's out
16 there. And as I read those interviews and what
17 I heard you say at the beginning is we don't
18 have statistics. So, in essence, even these
19 experiences are based on non-quantifiable
20 experiences and things that might have happened,
21 and opinions.

22 MS. WANG: That's a major question of
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1 this project, is any of this quantifiable. I
2 don't think you're ever going to come up with a
3 number, so how do you get at it?

4 MR. ROKITA: That's a fair agenda
5 item for this discussion. Maybe at the end of
6 day, we decide we stop spending taxpayer money
7 or it's going to be too much to spend to find
8 that kind of data.

9 MR. SEREBROV: I think we're going to
10 find that's the answer.

11 MR. ROKITA: Otherwise, we will stop
12 it here and recognize there is a huge difference
13 of opinion on that issue of fraud when it occurs
14 is obtainable, and that would possibly be a
15 conclusion of the EAC.

16 MS. SIMS: I don't know if the EAC
17 would come to a conclusion like that. Again,
18 it's all going to have to go back to the
19 Commissioners and they are going to have
20 discussions about, what they can pursue in this
21 area, but here are a couple things that I am

22 looking at. This is just from being in this

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1 field a long time. It may be difficult to -- I
2 don't think it's going to be impossible to get
3 exact statistics on voting fraud.

4 Can we take another step and get
5 better statistics on voting fraud, that is one
6 question. The other question is, is there a way
7 of identifying at this point certain parts in
8 the election process that are more vulnerable,
9 that we should be addressing.

10 MS. WANG: That's what I am trying to
11 say.

12 MR. GINSBERG: I guess I am curious
13 about why there is some academic work being done
14 about this when, in fact, in six months, you
15 have got the ultimate laboratory. Why would you
16 not come out with some sort of methodology to go
17 into all the polling places where there may be
18 an issue, with what amounts to a bipartisan
19 team, and take a look at it.

20 MS. WANG: That was actually in a
21 couple at least of the suggestions of
22 methodologies from the political scientist, but

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1 imagine the resources that it would take to get.

2 MR. GINSBERG: Truthfully, minimum.
3 I admit that my background and prejudices are
4 probably not where the political scientist's
5 are, as an academic matter.

6 MR. BAUER: Ben is a former
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7 journalist.

8 MR. GINSBERG: In the last election,
9 for example, in the Republican Party and the
10 Democratic Party, there were pretty good
11 samplings of precincts that had a Republican and
12 Democrat, probably 10,000 precincts around the
13 country more or less. Why would you not have a
14 Republican and a Democrat in each one of those?
15 With all due respect to the voters, a lot of
16 those groups are going to be perceived as
17 partisan, but I mean --

18 MR. GINSBERG: Maybe perceived but to
19 make it valid, you need to have representatives
20 of the parties conducting this and taking a look
21 at precincts, any precinct anybody wants in the
22 country where you're thinking there may be

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1 intimidation, where there may be fraud. And
2 instead of turning it into some sort of
3 political charge pre election, actually have
4 observers from both parties in the places where
5 this is most likely to occur, and see if it
6 occurs and how it occurs.

7 MS. WANG: The problem with having it
8 limited to those jurisdictions where you suspect
9 that it's very likely bad things will happen is
10 then you have a skewed result.

11 MR. GINSBERG: Well, I think you I
12 said any precinct anybody wanted to put people.

13 MR. GREENBAUM: Which sometimes you
14 don't know there's going to be problems. who

15 knew that Dilluth, Minnesota. We certainly had
16 no awareness that Dilluth, Minnesota was going
17 to be an area where Indian voters were going to
18 get intimidated at the polls.

19 My other concern is, a lot of times,
20 that is things outside of what either party
21 cares about. Sometimes there are maybe in
22 places where you have partisan elections that

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1 are going to be very close. Sometimes the
2 issues involve nonpartisan elections.

3 MR. GINSBERG: I don't disagree with
4 that. It can be any place where anybody
5 perceives a problem.

6 MR. SEREBROV: But one of the
7 questions was absentee ballots, how do you deal
8 with absentee ballots at a polling place.

9 MR. HEARNE: I think Ben's discussion
10 is a good one. The point he is saying, we have
11 a great laboratory coming up in terms of an
12 election. We can go back through next Tuesday,
13 that is all variable. I'm not saying it's not
14 at all, but the concept of being able to say
15 here's an election upcoming we're developing.
16 If you're going to need to develop some
17 methodology to study it, you can develop the
18 methodology looking forward to the event.

19 MR. SEREBROV: Wouldn't it be better
20 to wait for 2008?

21 MR. HEARNE: If you look forward to
22 that, and take the two stakeholders in the

1 election, which are going to be the party -- the
2 two parties, and figure out a way where you find
3 your hottest, most concerned polling places, we
4 will find the ones. You could do some
5 statistical analysis, find out ones that have
6 the greatest aberration, and try to identify
7 them, whatever way you want to do it.

8 MR. BAUER: If I may, this is
9 probably not the first time I have made an
10 unwise suggestion. I think from a whole host of
11 respects, it is very, very difficult to sell.
12 First of all, I don't think the American public
13 is going to want an election system where two
14 parties are involved in the election system.
15 Secondly, anybody who's served the parties would
16 know how quickly they will arrive at
17 understanding workers in polling places.

18 I tend to get along with Republicans,
19 but I doubt this would be anything other than
20 attractive and efficient controversial effort.

21 And the last point I would make is,
22 you're introducing a variable into the very

1 thing you want to study. If you announce
2 political parties are going out into the field,
3 you're going to affect behavior and you're going
4 to end up changing the subject you are
5 undertaking to study. It is not scientific,
6 will have zero credibility, and it is not what a

7 U.S. Government enterprise should go through.

8 MR. GINSBERG: The point was, you're
9 not looking to monitor the sanctity of American
10 elections. What you're looking for is valid
11 data to collect. And part of the problem that I
12 think you've got with the data you're collecting
13 is you're not sure how true it is. You are not
14 sure how much is political charges. You are not
15 sure, as you said, it is the charge that is made
16 one day all over the front page but straightened
17 out three weeks later. This is for data
18 collection purposes. This isn't about
19 monitoring the sanctity of the election.

20 MR. BAUER: The data collectors don't
21 have any credibility. The two major party
22 organizations in this country are not neutral

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1 collectors of data. Everything they are going
2 to collect is going to be collected in a
3 partisan way. That is true on your side. We're
4 not going to be able to persuade anybody that
5 this is anything different.

6 MS. WANG: We already have -- the
7 Department of Justice has a major observer
8 program.

9 MR. WEINBERG: The article lays out
10 exactly how the justice department finds the
11 polling places to put observers in. And it also
12 collects examples of the observer report fields.
13 So this -- and internationally, those of us who
14 have done international stuff know we do pretty

15 much the same thing, and they use pretty much
16 the same kind of forms. The fact of the matter
17 is that I think you can get a lot of data, you
18 can get it on a form. And the fact that people
19 are two different political parties doesn't mean
20 they are going to try to lie on forms. If it
21 does, things are pretty sad.

22 The other thing is that you do affect
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1 the election, and that's not bad. One of the
2 great, great saving graces of the observer
3 function is it opens everything up. You have
4 transparency. First time you don't have people
5 wondering what's going on in the polling places.
6 You have people knowing what is going on in the
7 polling places. And there's ways to control
8 them. They can sit in particular places. If
9 they have complaints, they can complaint to the
10 precinct chair.

11 There are things that you can do and
12 there are ways to organize it, and you can
13 figure out which polling places, what goal
14 you're trying to achieve that you can get
15 information. If you get it every election,
16 every year for the 25 years, I have seen and
17 it's doable. Will it take a lot of people,
18 sure. Take organizing, yes, but you know,
19 organizing is what you want, if you're going to
20 get data. Is it going to be scientifically
21 reliable, I don't know. I don't know if there
22 is anything that can be done, having read all

1 that, that is going to end up scientifically
2 reliable.

3 But what impressed me in reading
4 through all this is that these problems are not
5 -- you don't have the one solution fits all. If
6 you've got things happening inside polling
7 places, that's one thing. If you have things
8 happening on absentee ballots, you're going to
9 have a different approach. If you have
10 intimidation of voters, polling signs put up,
11 you're going to get deported if you vote, that's
12 a different problem. And I don't think you're
13 going to find a solution to either get data on
14 or resolve any of those problems with the same
15 solution.

16 MS. WANG: So you need multiple
17 studies.

18 MR. DONSANTO: I will tend to agree
19 with my friend Barry, and add to that a couple
20 caveats. Number one, the program Barry
21 honorably oversaw for a large part of his life
22 is based on a federal statute that gives the

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1 Federal Government statutory authority to put
2 federal observers in polling places when certain
3 conditions are certified to exist by the
4 Attorney General. Only a few states, I haven't
5 done a count, not all states allow election
6 monitors to be in the polls.

7 So you start out with the problem of
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8 access in the polling place. This is a problem
9 for us in law enforcement. We can know that
10 something is going to go on. If we were told
11 something was going to go on in Polling Place 3
12 in ward 4 in Chicago, we could send somebody in
13 there. I guess we could. Bad example.

14 MS. WANG: That's the recommendation
15 that we come out to change or encourage states
16 to change that.

17 MR. DONSANTO: But in terms of your
18 ability to employ something now, it's an
19 obstacle you have to overcome.

20 Secondly, and I think Barry touched
21 on this --

22 MR. SEREBROV: Maybe we'd overcome it
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1 if you get a candidate to appoint you as a poll
2 worker.

3 MR. DONSANTO: Then you get into a
4 position where you're skewing data. That's
5 where you're politicizing more so than just a
6 party watcher.

7 MR. SEREBROV: You can get the
8 parties to authorize you.

9 MR. DONSANTO: In Virginia, they
10 don't have poll watchers in Virginia. If a
11 candidate were to try to put a poll cashier in
12 Virginia, he would be kicked out, and most
13 states follow that rule, whatever.

14 The other thing is that I think it
15 was brought up early on in what you all

16 presented here, the types of things that go
17 wrong inside polling places are really not
18 representative of the uniform of things that go
19 wrong. The types of things -- there used to be
20 a time when election fraud was committed by poll
21 officers who just stole elections, but during
22 the past 30 or 40 years that I've been watching

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1 this stuff, the election administration business
2 has become more professionalized. And when you
3 have a professional sort of approach to the job
4 of administering elections, although there may
5 be something there that is representing a
6 political party, your loyalty goes beyond that
7 to the process. And it's becoming extremely
8 rare, extremely rare today, to find polling
9 officials that are complacent in election fraud,
10 whereas 30, 40 years ago, it was not unusual at
11 all.

12 So you know the kind of methodologies
13 that you've been talking about are not, for
14 example, going to allow you to capture
15 information on things that take place at the
16 polling place. It is not going to allow to you
17 capture information on intimidating voters,
18 absentee ballots. The situation is very hard to
19 measure.

20 MR. WEINBERG: It will give you
21 information on the difference in treatment of
22 voters that happens frequently, and it will give

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1 you other information about what happens as far
2 as the process, and whether the process is being
3 followed.

4 Professional balloting is a huge
5 question that's come up. Nobody knows how that
6 works anywhere, and whatever happens to those
7 ballots, I mean, come on. There are things that
8 you can learn about problems that contribute to
9 the distrust of the election process, even
10 though you probably wouldn't see a whole lot of
11 direct fraud.

12 MS. WANG: Again, the provisional
13 ballot is an interesting issue to raise.
14 Michael McDonald, who worked on the election day
15 study, he and I have talk about this a lot.
16 Section 203 covered jurisdictions, there was
17 more use of provisional ballots than in any kind
18 of jurisdiction. Can you start to draw
19 conclusions from that? So that's another thing
20 that you can look at.

21 MR. WEINBERG: I'll just interject
22 one more thing. There is the re-authorization

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1 of the Voting Rights act, that what we ought to
2 do is cut loose the observing from the
3 technically special covered jurisdictions and
4 have them be able to be assigned nationwide with
5 specific criteria, and that would help a lot of
6 the problems.

7 MR. BAUER: Our mandate here is to

8 look at the research. I disagree with the
9 secretary. I think some of the preliminary work
10 is absolutely essential to the credibility, to
11 the thoughtfulness and integrity of the effort,
12 but I don't think that, as I read this, this
13 means that our judgement is that we leave the
14 work that's been done today and create a hybrid
15 project which has as its aim to function as
16 improvement on current observing programs.
17 That's just not our mandate.

18 MR. GINSBERG: So our goal is to have
19 bad elections so we can get good data?

20 MS. WANG: You may be familiar with
21 this work by a woman named Susan Hyde,
22 University of San Diego, doing a comparison

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1 where there are observers as compared to where
2 there are not observers.

3 MS. ROGERS: I'd like to suggest, in
4 addition to party observing, states put their
5 own observing on the ground. When you come into
6 a state, unless you immerse yourself in that
7 state's laws and that state's procedures, often
8 you don't know what you're observing. You don't
9 know if what you're seeing is legal or illegal.

10 We did work with lawyers committee
11 and election protection, and reviewed a lot of
12 their information, sent back edits. We audited
13 some of their training classes and gave feedback
14 to those training classes. We had a lot of
15 community hotline communication on Election Day

16 where they called to tell us what they received.
17 Not everyone does that, but we're unable to
18 quantify what is observed or what is alleged as
19 fraud because the complaint doesn't come to us.
20 It may go to either party and they not share
21 that information with the local jurisdiction or
22 with the state election official.

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1 we've put 80 to 100 observing from
2 the Secretary of State's Office on the ground
3 since 2002. We provide them with radios set up
4 like a little war room. They call us when there
5 is a problem and we immediately have someone
6 there to find out what that problem is. They
7 write up reports, and they are able to take
8 those reports, and we know where we need to go
9 and what areas need to be shored up. This
10 allows us to have the ability to change the
11 process, if something needs to be changed.

12 Another thing, as far as parties in
13 our state, now the parties, rather than having
14 to be appointed as a poll watcher by a
15 candidate, each party is allowed to appoint up
16 to 25 statewide poll watchers. These people can
17 go anywhere they want to go. It seems to work
18 very well.

19 MR. SEREBROV: I wanted to make two
20 points. One was a reaction to some of the
21 comments before. I know Arkansas and lot of
22 southern states, both the parties and the

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1 candidates are allowed to have watchers in every
2 poll. The other thing is, in Arkansas, the
3 Secretary of State doesn't have the statutory
4 authority to do what you're doing in Georgia. I
5 wish they did. It would make my life a lot
6 easier, especially in the past, and it would
7 make Tim Humphrey's life a lot easier, if you
8 knew Tim. But really it's a state by state
9 problem. I don't have a gist -- and this is
10 something we talked about, there was also a
11 sampling of state law in the next phase to see
12 where the bugs are in that system.

13 MS. ROGERS: In Georgia, some of you
14 may know we have a state election board who has
15 authority. I actually yesterday pulled a list
16 of cases that we investigated in 2004. I don't
17 have the 2005 ones on here, but I can tell you
18 right now, of all of these cases right here, the
19 state election board investigated the majority
20 of these were absentee ballots.

21 MS. WANG: Well, I wish that every
22 state did what you did, then we could just add

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1 them all up. One thing we found, of course,
2 almost no states do that. Also, we spoke to
3 your successor, John Tanner. And the Federal
4 Government, the Department of Justice keeps a
5 database of what comes in but they will not
6 release that information to us. And they also
7 would not release to us any more than a few
8 dozen of the observer reports, which we also

9 think might be useful.

10 MS. ROGERS: We've seen a high
11 success rate, not in deferring fraud, but in
12 deferring the actions of election officials and
13 poll workers. Those actions where you talked
14 about you can't determine if they are fraud but
15 yet they appear to be a lack of attention to
16 detail. We bring these people up regularly.
17 And when you bring them up in front of their
18 peers, it is a huge deterrence. And you're
19 correct, every case we have brought forward, it
20 has not been an instance of fraud.

21 MS. SIMS: Well, I was wondering,
22 before we continue on, because we're already

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1 getting some ideas for possible areas and it
2 might be worthwhile just to put these ideas
3 down, even though I am certainly not looking at
4 this as all one project. Some of these things
5 are not going to be one project, and some things
6 will be more problematic and may not be
7 something we can do right away.

8 For example, for a number of reasons,
9 we couldn't do observers in this fall's
10 election, not the least of which is financial.
11 We probably won't have a budget, '07 budget, by
12 then. But actually, before we go on to this,
13 would it be okay if we talked about the
14 definition of voting fraud. Particularly, I'd
15 like to get into intimidation and suppression
16 areas.

17 If you don't have copies of that, we
18 can quickly run off some copies. One of the
19 reasons why I think this is of concern,
20 obviously, it would be helpful if we all knew
21 what we meant when we were talking about voter
22 fraud or voter intimidation. As we progress in 79

1 terms of what we want to research or how we want
2 to identify it or develop projects to identify
3 and deter and investigate, we have some common
4 ground.

5 MS. WANG: Did people get a chance to
6 look at the definition, and were there
7 objections?

8 MR. DONSANTO: Comments. The
9 definition in the opening paragraph of this is,
10 I think, taken from something that's kind of the
11 operational way that we articulate what voter
12 fraud is as distinguished from the types of
13 things that go on in the process. So that's how
14 we define vote fraud.

15 MS. WANG: It is the sincerest form
16 of flattery.

17 MR. DONSANTO: Well, whatever.
18 However, since half of this program is not
19 directed so much at fraud but focuses on
20 intimidation, I think we need to define the term
21 intimidation. Intimidation is a term that in
22 the context of elections, in my experience, has 80

1 no meaning at all. It can mean anything that
2 happens to you in connection with voting that
3 you don't like or that happens to somebody that
4 supports you that you don't like to. And the
5 other extreme, somebody who gets killed or a
6 cross burned on his yard to retaliate against
7 them for having exercised a franchise.

8 The word fraud is a word that
9 connotes criminal. Criminal connotes that the
10 remedy for doing it is to put somebody in jail,
11 to afford that person all the procedural rights
12 given to someone in a criminal trial, including
13 the right to counsel, and obligation of the
14 prosecutor to prove the case beyond a reasonable
15 doubt.

16 When applied to the word
17 intimidation, our research on the laws that
18 exist at the federal level has been that the
19 word intimidate in the criminal statutes means
20 to apply physical or economic duress upon a
21 victim in connection with a voting act. And if
22 you're going to use the word intimidate as you

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1 have in the fourth and fifth bullet from the
2 bottom on your page, I think accuracy would
3 require that you limit it to that.

4 MS. WANG: Well, that is to me
5 personally -- I don't speak for Job. See if he
6 agrees with me on this. This is a major matter
7 of concern to me. One of the things that I have
8 been exploring in my own head is the idea of

9 changing that so that you can broaden the
10 criminal intimidation laws on the civil side.

11 MR. DONSANTO: That's a civil side,
12 that's a different issue. That's not fraud.
13 Fraud equals crime.

14 MS. WANG: Well, the question --

15 MR. DONSANTO: Intimidation, there
16 are a universe of activities that can be
17 directed at people in a category of voter
18 suppression which are not fraud, which are
19 directed in the political process. Signs are a
20 good example of that.

21 MS. WANG: I think they are not under
22 the criminal law fraud, but if you think of

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1 fraud, and this is how we perceive fraud,
2 anything that distorts the system, the process,
3 then certainly, keeping people from voting has
4 the same distorting impact.

5 MR. DONSANTO: Yes, I agree with you.
6 The thing that you're leaving out is the word
7 corrupted, to affect an election campaign or
8 affects activities at the poll. Everything that
9 affects activities at the polls is encompassed
10 within your definition, and that encompasses
11 everything that occurs from the nominating
12 process on, criminal activity which is so
13 anti-social in that it warrants the ultimate
14 societal punishment, incarceration.

15 Now, I'm not going to tell you -- the
16 word I am focusing on here is intimidation.

17 There is an entirely another area having to do
18 with voter suppression which we're just
19 beginning to explore. And I give you an example
20 of how we're exploring this is the Tobin case
21 was sentenced yesterday. It was in The Post
22 yesterday. We're trying at justice to find ways

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1 to get at using the statutes, which we have to
2 get at aggravated forms of voter suppression. A
3 maliciously designed denial of service directed
4 at a get-out-to-vote telephone bank sufficiently
5 possessed criminal malfeasance that the person
6 who does something like that should go to jail.
7 Mr. Tobin, who is the executive director of the
8 New England Region of the Republican Party, is
9 facing ten months as a guest of the Attorney
10 General of the United States. Somebody who puts
11 -- maliciously circulates posters that contain,
12 "Republicans vote on Tuesday, Democrats vote on
13 Wednesday."

14 If we could find the people who do
15 that sort of thing, that isn't voter
16 intimidation. That is voter suppression. And,
17 yes, that kind of conduct, if done for the
18 design of deterring someone from voting, ought
19 to be a crime. And I assure you we have
20 investigated every single instance that has been
21 brought to our attention, and every single
22 instance, when we did an investigation, we were

84

1 unable to find who did it.

2 MR. BAUER: I'd like to ask a
3 question. I'm not sure about the distinction
4 between suppression and intimidation.
5 Intimidation is a vehicle for achieving
6 suppression.

7 MR. DONSANTO: You're right.

8 MR. BAUER: In one sense, there may
9 not be any difference in intent or effect.

10 MR. DONSANTO: Right.

11 MR. BAUER: The second question I
12 wanted to ask you, if you deal with this
13 definitional change, if you talk about physical
14 or --

15 MR. DONSANTO: In the context of the
16 term of intimidation, I would limit it that way.

17 MR. BAUER: But intimidation is
18 related to suppression, in terms of Mr. Tobin.

19 MR. DONSANTO: No, his is not an
20 intimidation. That's corrupt suppression.

21 MR. BAUER: Here's my question.

22 Intimidation conducted on a systematic scale for
85

1 the purpose of driving people away from the
2 polls has a suppressive nature.

3 MR. DONSANTO: I don't disagree, but
4 the question becomes what methodology they are
5 using to achieve that result.

6 MR. BAUER: The point you made about
7 capping off the physical and economic portion.

8 MR. DONSANTO: As far as intimidation
9 is concerned. Suppression is a broader term.

10 MR. BAUER: Let's talk about that
11 part of intimidation because I think, quite
12 frankly, intimidation isn't done for the
13 psychological joy of the intimidator. It is to
14 drive people away from the polls.

15 Granted, the justice department will
16 be looking to converting it to criminally liable
17 behavior. It has the feel, tone, color, of
18 maliciously interfering with people's lives.

19 MR. DONSANTO: Corrupt. I think I
20 see where you're going.

21 MR. BAUER: What if you have a party
22 that dresses up people in para military so they 86

1 look like military soldiers, and sends them into
2 targeted polling places to yell at voters as
3 they walk in, that they need to produce their
4 IDs, showing it to these people. If you had
5 that on a widespread, organized basis, and it is
6 clearly an intimidating behavior, it is clearly
7 malicious, you wouldn't say that that's outside
8 the range of conduct you would be concerned
9 about.

10 MR. DONSANTO: Under the laws we have
11 to work with today, Bob, that's not corrupt.

12 MR. BAUER: But you think the laws
13 you work with are supple enough?

14 MR. DONSANTO: We're trying to bend
15 the ones we've got to address aggravated cases
16 of voter suppression, and the Tobin case is an
17 example of that. And you know how we do this,
Page 64

18 if we won Tobin and we get a District Court
19 opinion, although he was acquitted on the 241
20 Count, if we got an opinion from the Court
21 saying the statute applies to this conduct,
22 that's the goal. You can bet the next time we 87

1 have a denying of service attack, we're going to
2 attack it the same way. whether we can then
3 take that case and make it apply to different
4 facts, we'll try.

5 MR. BAUER: That's what I wanted to
6 not.

7 MR. DONSANTO: But this is a work in
8 progress.

9 MS. WANG: Does this argue for a new
10 law?

11 MR. DONSANTO: I don't know that is a
12 policy question.

13 MR. HEARNE: Let me ask a question to
14 clarify that, to see where we are right now.

15 You mentioned the Tobin situation. The
16 allegation was often made and sometimes occurs
17 that an organization makes phone calls
18 intentionally misdirecting a voter to the wrong
19 poll, saying you have to bring eight forms of
20 identification, voting is on Wednesday.

21 MR. DONSANTO: That's false.
22 We would investigate that. 88

1 MR. GREENBAUM: Craig, can I call you

2 directly?

3 MR. DONSANTO: FBI.

4 MR. GREENBAUM: We did that twice in
5 2004. We had other instances we could have done
6 it. And the FBI, they did not want to
7 follow-up. We had the complainant.

8 MR. DONSANTO: Which field division?

9 MR. GREENBAUM: In Arizona, in
10 Florida. Florida, I think it was Palm Beach.

11 MR. DONSANTO: I'll tell you what
12 I'll do, I am not here to protest or intake
13 cases, but I write an awful FD 302.

14 MR. GREENBAUM: In Arizona --

15 MR. DONSANTO: If you can send me a
16 paragraph on these, I will send it to the
17 district election officer in that district and
18 ask what happened. I won't be able to tell you
19 what they responded to, but I will in fact
20 query. Because what I said is true, if we can
21 find out who does that sort of thing, I am eager
22 to.

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1 MR. HEARNE: Craig, in your opinion,
2 someone making those kind of false statements,
3 is that within what you understand to be
4 intimidation?

5 MR. DONSANTO: If it occurs within a
6 federal election. That is the unique way the
7 laws were written about if it occurs in a
8 federal election, that sort of behavior is a
9 conspiracy to deprive the victim of their right

10 to vote for federal office.

11 MS. WANG: I have to say, in some of
12 the interviews, we have heard similar complaints
13 from the people from the advocacy organizations,
14 that they have sent reams of documentation to
15 the DOJ and not gotten a response.

16 MR. GREENBAUM: We did something to
17 Tanner or to Alex Costa. Alex called back and
18 said, "Talk to the FBI." With two of the
19 instances, we talked to the FBI, and it was
20 clear that they just had no intention of doing
21 anything with it. Frankly, it turned us off
22 after that.

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1 MR. DONSANTO: In Arizona, I am not
2 entirely surprised, but that may be a personnel
3 problem. And it also may be a problem with
4 respect to how your facts fell insofar as the
5 law. It may be the fact that your facts did not
6 produce sufficient leads. These are all things.

7 MR. GREENBAUM: In one case we
8 actually had -- the person actually had the
9 number, because of caller ID and actually called
10 the number back, and someone answered the phone
11 and identified who they were affiliated with.

12 MR. DONSANTO: Right. This occurred
13 in the 2004 general election?

14 MR. GREENBAUM: Yes, it did.

15 MR. HEARNE: I can give you another
16 example that was presented to Congress, and it
17 was not followed up. That was a phone call to a

18 sitting retired Ohio judge in Marion County,
19 Ohio.

20 MR. DONSANTO: We did follow-up on
21 that one.

22 MR. SEREBROV: Yes. There was the 91

1 case I gave you.

2 MS. WANG: You might want to look at
3 the summaries of the interviews, because a
4 number of people have said they have given all
5 this information to the Department of Justice,
6 and they haven't done anything. I am just the
7 bearer of the news.

8 MR. DONSANTO: And the other thing
9 that bears in mind, we cannot prosecute
10 everything. We try to, based on the degree of
11 severity of the event and the need for
12 deterrence.

13 MR. HEARNE: Craig, not to belabor
14 the point but to make sure, in terms of the
15 intimidation, that I think it's very important
16 that we all understand, every election I ever
17 remember hearing about, we have these
18 allegations. And we always hear them and
19 everybody says, well, hey, no one did anything.
20 We're talking about calls to voters, like the
21 Tobin situation. We just talked about the other
22 situation, calls directed to voters trying to 92

1 give them misinformation.

2 what about calls to other people
Page 68

3 involved in the election, somebody calling and
4 saying, if you participate as an observer, as a
5 volunteer in an election, that we're going to
6 sue you for doing that, not voting, just
7 participating in the election process.

8 MR. DONSANTO: I'm not going to
9 comment on whether that's a crime or not.
10 That's probably more a statement of fact. The
11 underlying thing is that is communicated, it has
12 to be false. I understand why come people will
13 be appalled of the fact that you intend to put
14 poll observers in their precinct, and say want
15 to sue you.

16 MS. WANG: My understanding is you
17 don't think the way we have intimidation here is
18 comports with what the legal definition is.

19 MR. DONSANTO: I think out of the
20 exchange that I had, I think I have changed my
21 thinking a little bit. Can I run it out a
22 second time, see if it comes out better.

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1 The word intimidate is a word of art
2 that connotes physical or economic duress in
3 terms of criminal behavior, okay.

4 The word suppression is a work in
5 progress. I can tell you it addresses denial of
6 services, actions directed at get-out-to-vote
7 drives. I can tell you it is directed at
8 situations where maliciously false information
9 is communicated to voters to prevent them from
10 voting in election federal elections. Change

11 poll places, hiding the poll place, that's an
12 old type of thing.

13 So the point is the extent to which
14 the word suppression can be translated into
15 crime is a work in progress, with certain
16 aspects of it that I have just summarized here
17 being clearly within the definition but not
18 necessarily having those being exclusive.

19 MS. WANG: So is there some
20 particular language that you might suggest?

21 MR. DONSANTO: I think the word
22 corruptly.

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1 MS. SIMS: So the fifth bullet from
2 the bottom.

3 MR. DONSANTO: Intimidating practices
4 involving the use of economic, physical duress
5 to prevent or deter voting activity, and then a
6 separate bullet having to do with suppression,
7 corrupt activities or activities aimed at
8 corruptly suppressing. Corruptly with a word
9 that connotes specific intent. It's kind of
10 like you know it when you see it.

11 MS. WANG: Are we limited to the
12 Department of Justice definition of
13 intimidation?

14 MR. DONSANTO: You can do anything
15 that you want to do.

16 MS. WANG: Because I would rather not
17 have it be limited to economic or physical
18 deprivation.

19 MR. DONSANTO: This is what I am
20 trying to avoid, is that there are some things
21 that happen in the political process that aren't
22 pleasant, and the rent-a-cop scenario is one of 95

1 those, the poll watcher who aggressively pursues
2 his mandate and poll watches.

3 MS. WANG: That's what I'm talking
4 about.

5 MR. DONSANTO: That's not a crime
6 Fraud is a word that connotes crime.

7 MR. GINSBERG: You can't tune your
8 definitions to create a political resolve,
9 unless you want to make a political statement,
10 which is fine, but then let's label it that way.
11 And I hope that if you're going to manufacture a
12 definition like that, you would have precise
13 examples of what you're trying to bring in to
14 this new term you're coming up with.

15 MR. GREENBAUM: Sure. In terms of
16 this type of intimidation, actually the example
17 that Craig gave, the over aggressive poll
18 watcher, there are cases out there where those
19 poll watchers have been thrown out, not
20 necessarily because they committed a crime, but
21 they may have violated a statute.

22 MR. DONSANTO: And that is the 96

1 appropriate remedy for that kind of offense.

2 MR. GREENBAUM: But that's part of

3 intimidation though.

4 MR. GINSBERG: Poll watchers who are
5 being more aggressive than the local people in
6 the polls think that should be intimidating, and
7 that the poll watcher should leave.

8 Where does that fit into your definition?

9 Let's deal with that example.

10 MR. BAUER: Well, I want to go to
11 something you earlier said, which is, we
12 shouldn't be concerned with anything that isn't
13 criminal, that couldn't be established to be
14 criminal. Well, you just said -- Craig said
15 they are -- it is a work in progress to begin
16 with. That is not a boundary that is easily set
17 here.

18 And the second thing, I don't believe
19 that the EAC should announce that it's only
20 dealing with criminal forms of illegal conduct.

21 MR. GINSBERG: You can't stretch
22 definitions to achieve a political result here. 97

1 I was referring to the way she was trying to
2 change it.

3 MS. ROGERS: Does the definition
4 include conspiring to do any of these?

5 MS. WANG: That can certainly be
6 added.

7 MR. HEARNE: Let me ask a question.
8 When you use the word intimidation, a lot of
9 people have come to me in different contexts and
10 say, "I find it intimidating when I go in and

11 people with signs are sticking something in
12 front of me."

13 MS. WANG: well, how did you make the
14 distinction in the report that you wrote?

15 MR. HEARNE: well, the report would
16 be somebody trying to prevent somebody from
17 exercising their right. That's a component
18 point. You work into it.

19 MS. WANG: Intimidating practices.

20 MR. HEARNE: I want to bring out the
21 point, it is not just a perception that some
22 hypothetical voter found it intimidating to go

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1 through the process, but it was intended by the
2 person engaging in that act to deny that person
3 their right to participate in the election.

4 MS. WANG: I had specifically wanted
5 and I guess there had been some objection to
6 having violations of the Voting Rights Act part
7 of this definition, but I think Craig said what
8 was the problem. I think there are some Section
9 2 violations and there was an objection to that.

10 MR. DONSANTO: The problem that I've
11 got with their definition is that the word fraud
12 appears in the labelling definition, and I don't
13 know what the Congress meant when it put that
14 word in there.

15 I have been a prosecutor my whole
16 life. To me, fraud is a crime. There is no
17 such thing to me. Fraud connotes, yes, there is
18 civil fraud, but civil fraud, I have always been

19 a believer in the fact that most civil frauds
20 could be criminal fraud. Fraud is obtaining
21 property from another through lying.

22 MS. WANG: Defining elect fraud and 99

1 defining voter intimidation.

2 MR. GINSBERG: Let me go back to my
3 hypothetical. Does the definition of a poll
4 watcher in an unfriendly precinct, who gets
5 intimidated, who goes about his duties under the
6 statute to challenge voters that he or she
7 thinks may be improper, and is intimidated out of
8 that polling place from doing the poll watcher's
9 job, does that fit in your definition?

10 MS. WANG: Well, that goes back to
11 the problem of where do you draw the line
12 between allegations and something that would
13 indicate that there was some merit to it, some
14 sort of investigation or official action, which
15 is a problem that you have in all of these
16 examples, so I can't say this is where you draw
17 the line in this particular instance the same
18 way. I'm not sure how you draw the line when
19 someone alleges that a felon has voted and they
20 should be prosecuted and thrown in jail and it
21 is the case that they did not know where they
22 were not allowed to vote. There is line drawing 100

1 that has to be done that isn't easy.

2 MR. DONSANTO: Couldn't you possibly
3 address this by putting before the preface
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4 something to the effect that the definition that
5 we're providing here is a definition that we're
6 going to be using to define the scope of this
7 project? Most of the activities described here
8 are crimes, but that is not necessarily the case
9 with all of them.

10 MS. WANG: I'm fine with that.

11 MR. DONSANTO: Something like that.

12 MR. HEARNE: Tova, let me make sure
13 your point is one that I agree with, is to say
14 let's look at we're not saying somebody finds it
15 intimidating, but something intimidating enough
16 to prevent somebody lawfully participating in
17 the election process. Do we include just the
18 voter or other people, volunteers, people
19 participating, people driving them to the poll?
20 If somebody wants to drive somebody to the polls
21 and slashes their tires, does that count as a
22 suppression or intimidation?

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1 MS. WANG: Well, you know, we had
2 that case already.

3 MR. HEARNE: When we look at that
4 definition, what are we looking at?

5 MS. WANG: Well, they are in jail
6 now.

7 MR. DONSANTO: That's a Wisconsin
8 case.

9 MR. GINSBERG: What's the distinction
10 between that case and the phone case?

11 MR. DONSANTO: None. We wanted both
Page 75

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12 of them. We were prepared to take both of them,
13 but we only had enough resources to pursue one,
14 and the District Attorney in Milwaukee agreed to
15 take operation elephant flat foot. That's what
16 it was called. The name of it was called
17 elephant flat foot. Instead of jamming the
18 phone lines of the get-out-to-vote drive, they
19 took the vans that were going to be used to
20 deliver voters to the polls and wrecked them.

21 MR. GINSBERG: Is that intimidation?

22 MS. WANG: It probably doesn't count
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1 because it does distort the ability to vote, so
2 I would guess so.

3 MR. SEREBROV: Well, it's an
4 intentional action, so it's included.

5 MR. DONSANTO: There is corrupt voter
6 suppression, and those guys are all in jail.

7 MR. GINSBERG: And you don't have the
8 federal precedent.

9 MR. DONSANTO: The same thing, the
10 object of the scheme was to deprive the victim
11 of their right to vote in a federal election,
12 the right to vote for federal office. That was
13 the object of it, same way as at the poll.

14 MS. WANG: Are there other comments
15 or suggestions to the definition that we have,
16 other than Craig's?

17 Is this a good time to take a break?

18 MS. SIMS: I wanted to mention that
19 Secretary Todd ROKita had asked about

20 legislative history in connection with these two
21 things. I had done some initial research and
22 hadn't found it to be helpful. As I recall to a
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1 certain extent, these were, I believe,
2 amendments added on the floor of the House, and
3 I don't know there was a lot of discussion
4 associated with them.

5 MR. ROKITA: Was there any?

6 MS. SIMS: Other than I knew that the
7 voter intimidation was a direct reaction to the
8 voting fraud amendment. What a surprise. That
9 was pretty clear, but there wasn't a lot in here
10 that I could see. The meat of this bill, the
11 discussions took place outside of public venue.

12 MR. ROKITA: If there is some way we
13 can run a quick search on 241 and print off some
14 legislative history.

15 MR. DONSANTO: 241 was enacted in
16 1886.

17 MR. ROKITA: Help America Vote Act.

18 MS. SIMS: We have a volunteer ready
19 to do that, but it may be a good time to do a
20 break.

21 MR. HEARNE: Before we conclude that
22 point, my sense was, is somebody going to
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1 re-work it, are we going to break it into two?

2 MS. WANG: We're going to put this
3 little preface. She got all this down.

4 MR. HEARNE: Is that transcript going
5 to be available to us?

6 MS. SIMS: We can make it available
7 to you, probably 15 days.

8 (Short Recess.)

9 MS. SIMS: As you notice, we have
10 been joined by Paul DeGregorio and our Executive
11 Director, Tom Wilkey, and Julie Thompson
12 Hodgkins.

13 CHAIRMAN DEGREGORIO: Let me, first
14 of all, thank you on behalf of the Commission
15 for coming today and participating in this
16 important working group. We know that Job and
17 Tova have worked for many months now on this
18 project, and some of you together, to discuss
19 this important issue of voter fraud and voter
20 intimidation that is required under HAVA for the
21 EAC to take a look at. And we have taken our
22 role very seriously to do, and believe they have

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1 brought together some of the best people in the
2 country to take a look at these issues and to
3 come forth with some ideas for the EAC.

4 Vice-Chairman Martinez wanted to be
5 with us today, but his father is fairly sick in
6 Austin, so he had to fly back yesterday evening
7 to be with his father and so he couldn't be
8 here, but I've asked our executive director, Tom
9 Wilkey, raise your hand, and our legal counsel,
10 Julie Hodgkins, to join us this afternoon.

11 I know that you all have had some

12 discussions already and we're really just going
13 to listen, not to participate, because we know
14 you are at the point where you're going to be
15 talking about some recommendations and talking
16 about some things that you want to direct to the
17 EAC.

18 so we thought it would be important
19 just for us to sit back and to listen to the
20 discussion so it can help us, as the consultant,
21 to then move forward with recommendations to us
22 in future months. Thank you, again, for

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1 participating. I don't know if you're going to
2 have future working groups of this group, but
3 certainly --

4 MS. SIMS: Not for this phase, but if
5 we have subsequent research, I'm sure that we'll
6 need working groups to help us with that.

7 CHAIRMAN DEGREGORIO: Peggy Sims and
8 I go back twenty years when I was the director
9 of elections in St. Louis County, and Thor was
10 pretty young and maybe still in law school. I
11 remember those days. I used to call Peggy when
12 she worked for the Federal Election Commission
13 in Franklin. Donsanto also goes back many, many
14 years to IACREAT seminars when I used to hear
15 him talk about voter fraud issues throughout the
16 country. We have got some other people in our
17 own staff who are participating in helping this
18 along. Thank you, Peggy, for your work. I will
19 let you go ahead and continue.

20 MS. SIMS: Okay. I just wanted to
 21 say as we get into ideas, because remember,
 22 we're not just talking about statistics, we're 107

1 talking about identifying, deterring, and
 2 investigating voter fraud and voter
 3 intimidation. Some of that, in my mind, and
 4 this is, again, from my experience at FEC, will
 5 involve the process and how election officials
 6 run the process.

7 We're also working on management
 8 guidelines for voting systems. As you may know,
 9 the EAC recently released its voluntary voting
 10 system guidelines which are used to test voting
 11 equipment. Now, we're also focusing -- we're
 12 also working on updating those guidelines. That
 13 is going to be a constant process, but the
 14 companion piece, one that I know Tom Wilkey has
 15 urged us to do for a long time, is to develop
 16 management guidelines for the management of
 17 these voting systems. We're working on that
 18 right now.

19 Also, we have a project looking at
 20 state vote counting and recounting laws in
 21 contested elections. And the effort will also
 22 pick up best practices that apply to these 108

1 areas.

2 We also have a report that is being
 3 -- I guess it is still in the draft stage for
 4 provisional voting, and one on voter ID that
 Page 80

5 might relate to some of these problems that we
6 saw, that may actually relate more to how the
7 process is administered rather than actual
8 voting fraud. But if these processes are
9 administered badly, they can leave open the
10 opportunity for voting fraud.

11 So I wanted to make sure you had that
12 information available before we got into this
13 discussion.

14 MS. WANG: Okay. Well, as I kept
15 referring to earlier, I did talk to a bunch of
16 political scientists and other expert types in
17 the field. You have in your materials sort of
18 summaries of the recommendations that they made.
19 As I said, if ever there was something everyone
20 agreed to, this would be a complex undertaking.
21 I am not a political scientist so I am sort of
22 reluctant to myself recommend any one of these

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1 methodologies over another, which is why I think
2 in Phase 2 it will be necessary to have someone
3 of the nature of the people I interviewed
4 involved in the process, someone who really
5 knows how to do statistical work and do these
6 kind of studies. And there are people out there
7 like that, and I can make some recommendations
8 in that regard.

9 I would note that several of the
10 recommended methodologies, sort of a
11 multi-pronged approach we were getting at
12 earlier, many of them include the elements of

13 conducting more interviews, doing a survey,
14 which I know brings up issues for the EAC, but
15 doing a survey of voters or administrators or
16 both, and finally, analyzing and doing voting
17 list comparisons.

18 So I'm happy to talk further about
19 any of the particular methodologies that were
20 suggested to me but I think I don't feel that I
21 am necessarily in the position to judge which of
22 these is best, and I would be open to any

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1 thoughts you have as to what seemed like they
2 make the most sense.

3 MS. SIMS: The difficulties we have
4 with surveys is because this agency, unlike FEC,
5 is under the Paperwork Reduction Act
6 requirement, which means we have to go through a
7 process which Julie could tell you, if you need
8 to know. But what it does is delays our ability
9 to be able to do surveys quickly because we have
10 to go through this process before we're allowed
11 to conduct surveys.

12 MR. DONSANTO: Paperwork Reduction
13 Act requires you to --

14 MS. SIMS: Make paperwork, yes. The
15 only reason why I bring that up then is if we're
16 going to have surveys as part of a research
17 process, we have to build in time to be able to
18 go through this process to get our surveys
19 approved and ready to go.

20 I know people were already talking

21 about some ideas earlier. I will just go ahead
22 and put them up. I know we had a discussion

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1 about observers, using observers or poll
2 watchers. I'm not making any judgements on the
3 cost of these or our ability to do this. I just
4 want to make sure we put up our ideas.

5 MR. CORTES: In terms of that, could
6 we define when we're talking about observers,
7 what those people actually do in the polling
8 place? I think there's different states have
9 allowed different types of access to people and
10 what they can do there. I believe you mentioned
11 earlier that in Virginia there aren't observers
12 allowed, but they do have people in the parties
13 in there that keep track of who comes into the
14 polling place.

15 So in terms of making those
16 distinctions, if we could get some definitions
17 for these, I think it would be helpful.

18 MS. SIMS: Would we be able to do the
19 definitions or would these be defined by the
20 states?

21 MR. SEREBROV: Part of our suggestion
22 was a survey state wise.

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1 MR. HEARNE: In terms of what I think
2 Ben was suggesting, I think Barry had a concept.
3 What you were talking about, Barry, was sort of
4 the rigorous questionnaire kind of thing that is

5 a uniform observation form that observers were
6 given, with very quantifiable data, that they go
7 in and observe the conduct of the election and
8 report anything based on that sort of standard.
9 That is what you're conceiving. So somebody
10 would say, how many people are registered to
11 vote here, how many machines are in this polling
12 place, how long a wait, how many people came
13 through the line, check off those objective
14 factors, is that what you're thinking of?

15 MR. WEINBERG: Right, whatever else,
16 comments observers want to make on the forms.

17 MR. GREENBAUM: At this point, we're
18 just putting ideas on the table. We're not
19 discussing how we feel about them.

20 MS. SIMS: That's correct. We know
21 we don't have universal support.

22 MS. ROGERS: On the subject of

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1 observers, there seems to be two prongs; one,
2 observers used in the collection of data, but
3 two, observers used as a methodology in
4 deterring fraud, which seems to me to be two
5 different uses of observers, and I wanted to
6 record that.

7 MS. WANG: Let's just talk about the
8 methodology first because I have a list of
9 things that we should do going forward.

10 I am focusing on the methodologies first.

11 what do you all think about doing a
12 survey?

13 MR. DONSANTO: Survey of what?
14 MS. WANG: Well, you could do it a
15 couple different ways. Some of them actually
16 are described here.
17 MR. BAUER: Voter surveys?
18 MS. WANG: Voter surveys, what did
19 you experience at the poll.
20 MR. DONSANTO: Who are the people
21 that would get the survey?
22 MS. WANG: Well, it would be to have 114

1 some sort of random survey that a political
2 scientist would know how to devise.
3 The other thing is having observers
4 who either survey voters as they come out of the
5 poll.

6 MR. WEINBERG: But is this a survey
7 to determine fraud or to determine what happened
8 in the poll? What's to come out of this, what
9 is the survey supposed to tell us?

10 MS. WANG: Whether the person
11 participated in -- or who knows how much they
12 will self report, or observed some kind of
13 practice, fraud, or intimidation practice.

14 MR. BAUER: Is this based on the
15 Overton?

16 MS. WANG: Several of the experts
17 interviewed that I spoke to suggested a survey.
18 There was also a suggestion of a more massive
19 survey of administrators that would be much more
20 comprehensive than just trying to do interviews

21 of these people.

22 MR. GINSBERG: How many voters were 115

1 they willing to --

2 MS. WANG: No one was willing to come
3 up with a number. They just said it would have
4 to be big.

5 MR. DONSANTO: It would have to be
6 huge.

7 MS. SIMS: When they referenced
8 election officials, they were talking about
9 local and state election officials.

10 MS. WANG: Well, at this point, local
11 because the state election officials have been
12 easy to have conversations with.

13 MR. BAUER: There is one kind of
14 survey intended to determine whether or not the
15 voters we talked to who say they were registered
16 were, in fact, registered. As Overton
17 described, this is a statistically
18 representative sample of people who purported to
19 report how they voted. And the other one,
20 somewhere, you are basically converting them
21 into eyewitnesses.

22 There are very different kinds of surveys for 116

1 very different purposes.

2 MR. GINSBERG: Did you commit fraud
3 at the polling place?

4 MR. BAUER: Trying to transcend the
5 anecdotal nature of what we do about frauds, it

6 seems to me -- I am not an expert on polling
7 methodology, but the potential for
8 interpretation of an awful lot of data collected
9 for marginal potential value, it doesn't tell
10 you very much.

11 MR. GREENBAUM: Let me agree with
12 Bob.

13 MS. WANG: Just for the record.

14 MR. WEINBERG: I think a better
15 question would be whether anybody thinks the
16 survey would be useful.

17 MR. DONSANTO: It is for the
18 practical. It might be useful. It is just not
19 practical.

20 MR. GREENBAUM: Except to the extent
21 I am aware of all the things we have on there.
22 How do we capture where most of the fraud's

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1 taking place, which is not in the polls.

2 MR. DONSANTO: Right.

3 MR. GREENBAUM: For the initial, I
4 will state that it's my opinion.

5 MR. GINSBERG: But come up with a
6 list about where you think the fraud is being
7 committed, see if you can come up with a
8 methodology.

9 MS. WANG: There was this bunch of
10 people who independently came up with the idea
11 of picking ten places where you know there have
12 been a lot of problems, and some people where
13 there haven't, make them match geographically,

14 demographically, and try to see where the
15 differences are.

16 MR. GREENBAUM: It's tricky. I know
17 this in terms of some of the stuff I have done,
18 but sometimes you think that places are doing
19 better than they really are, and sometimes you
20 think that places are doing worse.

21 MR. HEARNE: Let me suggest an
22 objective criteria that you might get in the 118

1 first gathering. In Ohio, a lot of allegations
2 were made that voters were intimidated or
3 suppressed, the voter buys, taking older ones
4 and not putting them in others. There was a
5 U.S. House administration hearing, and officials
6 in charge said, no, we had quality distribution
7 based on number of voters. The lines were long
8 in certain areas, as they were in others.

9 MS. WANG: We don't want to get into
10 that particular example.

11 MR. HEARNE: That's the kind of
12 objective observation to be quantified. If you
13 had an observer in the polling place that would
14 be -- ben had suggested a Republican and
15 Democrat in interest. If you had an appropriate
16 sampling of why it was taking this long to vote
17 in this precinct, this long in this precinct.

18 MR. GREENBAUM: That's not even a
19 fraud issue, I mean, not in my mind. And
20 believe me, we have studied the Ohio elections
21 administration very closely, given that we sued

22 the Secretary of State. That goes more to

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1 election administration as opposed to a fraud
2 issue.

3 MR. ROKITA: So it doesn't fit under
4 your definition of fraud.

5 MS. WANG: It depends on whether
6 there was some reason to believe it was
7 intention, in my personal opinion.

8 MR. GREENBAUM: Well, the problem in
9 Franklin, Ohio, was determined how the machines
10 were going to be allocated.

11 MR. HEARNE: Let me take that as an
12 example. That is something that undermines a
13 lot of people's confidence in the election
14 process, when somebody is going into the process
15 and saying, we're only going to put one polling
16 machine for every thousand people in this
17 polling place, and fifty of them for 500 people
18 out here. That would be the kind of thing you
19 can quantify. You can find out directly what is
20 the data, what you think you can do that now.
21 We know that now.

22 MR. HEARNE: And that would be

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1 helpful.

2 MS. SIMS: Maybe the question is how
3 do we find out about that now. Right now, we
4 find out through --

5 MR. ROKITA: The states and the

6 counties.

7 MS. SIMS: The states and the
8 counties, and also calls made to the justice
9 department.

10 MR. HEARNE: Or about the lines. You
11 always get this allegation about long lines.
12 Every voter is going to come out with a
13 different perception, and you're always going to
14 have these competing stories about long lines in
15 different areas. If you had some teams in there
16 watching this and timing it, you would get some
17 objective criteria to evaluate those
18 allegations.

19 MR. GREENBAUM: From my point of
20 view, why would you want a Republican and
21 Democrat, why won't you want a college student
22 or someone else that people can agree doesn't go
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1 in there with any sort of biases?

2 MR. SEREBROV: You can't necessarily
3 get a college student in the polls.

4 MR. GREENBAUM: Right. The state
5 laws are an impediment in a lot of places.

6 MS. SIMS: Well, some of these
7 things, like the machine placement, that's just
8 an example. A lot of things I personally see in
9 the press before I see anywhere else. That gets
10 to your following up on some of the press
11 reports to find out whether or not something
12 really happened, but that again is not a hundred
13 percent reliable because we're only getting a

14 bit of the picture. And if you follow-up on
15 those press reports, we may find out that an
16 allegation of fraud was not fraud at all, it was
17 a mistake.

18 MS. WANG: Well, that's the case. I
19 don't know if we can come up with a methodology
20 in here. None of us are political scientists at
21 all either. So I just put these in front of you
22 as the types of things that people came up with.

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1 I think, as we have talked about, it
2 is going to be a combination of approaches which
3 the work that we have already done will be one
4 of those ingredients supplemented by something
5 that political scientists would do.

6 We can get some more ideas flowing.
7 Job and I talked about what we have thought
8 about as being additional steps that could be
9 taken. They are not methodologies but things
10 that we think still need to be done, even just
11 based on what we have already done. Should we
12 move into that or stay on this?

13 MS. SIMS: We can certainly go on
14 because we can come back to this too. One thing
15 I would like to ask folks to consider again,
16 even though we don't have complete data because
17 this is a preliminary study, we do know of areas
18 in the process itself that are more subject to
19 attacks by voting fraud and are the studies EAC
20 can do in those areas.

21 MR. GREENBAUM: Absentee.

22

MS. ROGERS: We haven't talked much

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1 about absentee ballot. We have talked about
2 observers in the polling place, but the
3 empirical data shows it is absentee balloting
4 fraud, we're poised to see a tremendous amount
5 of that grow.

6 Example, in Georgia, that's happening all
7 over the nation which is now a no-excuse by mail
8 absentee state. In addition to that, it was
9 stuck in our law, it was a caveat that said that
10 political parties could not attach campaign
11 material to an absentee ballot application.
12 That was taken out. It was also ruled that a
13 postage stamp is not a thing of value. So if
14 you put all of those together, we're going to
15 see both parties flooding mail ballots with
16 absentee ballot applications.

17 MS. WANG: Sarah Ball Johnson, who is
18 in charge of elections in Kentucky, we
19 interviewed, talked about the churches gathering
20 people together to collectively fill out their
21 absentee ballot, and being told if they don't
22 vote in a certain way, they were going to hell.

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1 MR. DONSANTO: That's probably true.

2 MR. ROKITA: There is an example of
3 something you can follow-up on.

4 MS. ROGERS: We have already seen a
5 huge increase in -- I won't say fraud, but in
6 complaints. This law was in place last year and

7 we only had municipal elections in November.
8 Not everyone has really wised up to this but a
9 few candidates did, and there was one particular
10 election in Richmond County where going into the
11 run off, the winner was clearly ahead by a lot
12 of votes, and the losing candidate that was
13 down, before he went to the run off, he found
14 out about this little caveat, and he went
15 knocking on every door with an absentee ballot
16 application, and by George, he won, and won big.
17 That's the area.

18 And the problem is that you're trying
19 not to make it harder on those who are disabled.
20 At the same time, you don't want to keep adding
21 levels and layers of security that prevents them
22 from getting the access that they need, but as

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1 you take away those levels of security, it
2 follows on the other side as well. I know we
3 haven't really addressed that, but observers
4 don't take care of that process.

5 MR. HEARNE: You mentioned something
6 that might be helpful in the sense of,
7 statistically, you can look at an election and
8 you can find results that you can look at and
9 say, this doesn't make any sense, how you would
10 get this kind of vote performance out of a
11 particular vocational place or group of absentee
12 ballots.

13 MS. ROGERS: Well, some of the cases
14 we have looked at, they said, look at these